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8 UNITED STATES DISTRICT COURT
9
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION

12 In re UTSTARCOM, INC. SECURITIES
LITIGATION

) Master File No. C-04-4908-JW(PVT)

) CLASS ACTION

13
14 This Document Relates To:

15 ALL ACTIONS.

) FOURTH AMENDED CONSOLIDATED
) COMPLAINT FOR VIOLATIONS OF THE
) FEDERAL SECURITIES LAWS

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I. INTRODUCTION

1. This is a securities fraud class action on behalf of all persons who purchased the publicly traded securities of UTStarcom, Inc. (“UTSI” or the “Company”) between 2/21/03 and 10/12/07 (the “Class Period”), against UTSI and certain of its officers and directors for violations of §§10(b), 14(a) and 20(a) of the Securities Exchange Act of 1934 (the “1934 Act”) and Rules 10b-5 and 14a-9 promulgated thereunder, 17 C.F.R. §§240.10b-5 and 240.14a-9, and against SOFTBANK Corporation (“SBC”), SOFTBANK America, Inc. (“SBA”) and SOFTBANK Holdings, Inc. (“SBH”) (collectively, “SOFTBANK”) for violation of §20(a) of the 1934 Act.

2. UTSI is an Alameda, California-based company that designs, manufactures, and sells wireless, “limited mobility” telecommunications systems known as Personal Access Systems (“PAS”) to service providers that operate wireline and wireless networks in rapidly growing communications markets. Prior to the Class Period, substantially all of the Company’s sales (85%-98%) were to two service providers in China, China Telecom and China Netcom. China was the largest and fastest growing communications market in the world, and UTSI dominated the PAS market, selling 62.5% of PAS infrastructure systems and 70% of PAS handsets by the end of 2002. UTSI’s sales grew exponentially from \$10 million in 1995 to \$981 million in 2002. The rapid sales growth continued during the Class Period – reported sales increased to \$1.92 billion in 2003 (\$1.7 billion or 86% from China) and \$2.6 billion in 2004 (\$2.0 billion or 79% from China).

3. Defendant Hong Liang Lu (“Lu”) was the Company’s Chief Executive Officer (“CEO”) throughout the Class Period. Defendant Michael J. Sophie (“Sophie”) was the Company’s Chief Financial Officer (“CFO”) until 9/05, and the Company’s Chief Operating Officer (“COO”) from 9/05 to 4/06 when he “resigned.” Defendant Ying Wu (“Wu”) was, until his termination in 6/07, the CEO of UTStarcom China Company, Ltd. (“UTSI-China”), the Company’s Chinese subsidiary. Defendant Thomas J. Toy (“Toy”) was a director of UTSI, chairman of the compensation committee and a member of the Audit Committee. SOFTBANK was the Company’s largest shareholder and third largest customer and, as reported in every Form 10-K UTSI filed with the Securities and Exchange Commission (“SEC”), has significant influence over UTSI’s management and affairs.

4. Lu, Sophie, Wu and Toy (collectively, “Individual Defendants”) defrauded Class members by (1) causing UTSI to report materially false and misleading financial results in violation of Generally Accepted Accounting Principles (“GAAP”) and the Company’s publicly reported accounting policies, (2) falsely representing that UTSI’s financial results were fairly presented in all material respects, (3) falsely representing that Lu and Sophie had designed, established, and maintained adequate disclosure controls and procedures¹ to provide reasonable assurance that UTSI’s financial reporting was reliable and in accordance with GAAP, and (4) falsely representing that Lu and Sophie had evaluated the Company’s disclosure controls and procedures and concluded they were adequate and effective.

5. As detailed herein, numerous facts from corroborating sources conclusively establish that each of these representations was materially false and misleading, and raise a strong inference that Lu, Sophie, Wu, and Toy knew it. The Company has admitted that its financial results were not fairly presented in accordance with GAAP, and that UTSI’s disclosure controls and procedures were not effective, but riddled with numerous material weaknesses. In fact, the Company admitted there were (and still are) significant control deficiencies related to revenue recognition, cost of sales, inventory, deferred costs, inventory reserves, goodwill, accrued expenses, related-party transactions, and the preparation of the Company’s financial statements.

6. ***The Company has restated its financial statements three times so far, and admitted that every financial statement issued during the Class Period was materially false and misleading.***

The Company admitted that it improperly recognized more than \$328 million of revenues on 84 transactions over six years (2000-2005), that it improperly failed to record \$26.7 million of stock compensation expenses over eight years (1998-2005) and that it failed to record a \$7.5 million impairment charge in 2003 on a related-party transaction. As shown in the following chart, the three

¹ Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an issuer in the reports that it files or submits under the 1934 Act is accumulated and communicated to the issuer’s management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosures. SEC Rule 13a-15(e), 17 C.F.R. §240.13a-15(e); SEC Rule 15d-15(e), 17 C.F.R. §240.15d-15(e).

1 restatements establish UTSI overstated net income by \$121.5 million from 2000 to 2005 (\$ in
2 millions):²

	2000	2001	2002	2003	2004	2005
3 Originally Reported	\$27.0	\$56.9	\$107.9	\$202.3	\$73.4	(\$487.4)
4 Net Income (Loss)						
5 Restated Net	\$21.8	\$47.2	\$81.6	\$192.4	\$50.8	(\$532.6)
6 Income (Loss)						
Amount Overstated	\$5.2	\$9.7	\$26.3	\$9.9	\$22.6	\$45.2
Percent Overstated	23.8%	20.6%	32.2%	5.2%	44.5%	9.3%

7 7. In 4/05, the Company admitted it did not have the ability to test for impairment of
8 goodwill, and then recorded a \$323 million charge to write off 100% of the Company's goodwill in
9 3Q05. And the Company admitted that it did not have sufficient controls in place to ensure sales
10 were not being obtained by bribing foreign government officials in violation of the Foreign Corrupt
11 Practices Act ("FCPA"), causing investigations by the SEC and the Department of Justice ("DOJ")
12 that will likely result in sanctions, including fines, disgorgement, and an injunction.

13 8. The magnitude and duration of the significant internal control weaknesses,
14 restatements, and impairment charges strongly infer Lu, Sophie, Wu, and Toy were at least
15 deliberately reckless in representing that the Company's financial results were fairly presented in all
16 material respects, and that UTSI's disclosure controls and procedures were adequate and effective.
17 It is the only plausible inference when also considering the lawsuit filed against Lu, Sophie, and
18 UTSI by the SEC on 5/1/08; the Cease & Desist Order ("C&D Order") Lu, Sophie, and UTSI agreed
19 to in order to settle the suit; the Company's explanations for the restatements; information provided
20 by former UTSI employees; the positions of Lu, Sophie, Wu, and Toy at UTSI; suspicious insider
21 selling by Lu, Sophie, Wu, Toy, and other UTSI executives; the resignation of Sophie; the
22 termination of Wu; and other facts detailed herein.

23 9. These sources establish, among other things, that (1) Lu, Sophie, Wu, and Toy knew
24 it was a common practice at UTSI to supplement or amend sales contracts with side letters that
25

26
27 ² On 6/1/06, the Company restated and reduced net income from 1Q05 to 3Q05 by \$2.6
28 million, which was reflected in the \$487.4 million net loss originally reported for FY05.

1 contained non-standard product upgrade provisions precluding revenue recognition; (2) Lu, Sophie,
2 and the Company's Audit Committee (of which Toy was a member) received multiple Management
3 Recommendation letters from UTSI's auditors ***beginning in 3/03***, detailing multiple and significant
4 internal control weaknesses related to revenue recognition, including the need to "strengthen
5 procedures to ensure side letters and contract amendments are communicated and accounted for in a
6 timely manner"; and (3) UTSI improperly recognized \$400 million of revenue on 84 sales
7 transactions between 2000 and 2005 because sales contracts were amended or supplemented with
8 product upgrade provisions. The SEC summarized its factual findings in the C&D Order as follows:

9 This matter involves recurring internal control deficiencies and inaccurate
10 financial filings by UTSI, a publicly-traded telecommunications company that has
11 restated its financial statements three times since 2005 to correct multiple accounting
12 irregularities. Since 2000, UTSI has improperly recognized revenue on transactions
13 subject to undisclosed side agreements, failed to properly disclose and account for
14 related party transactions, and failed to properly record compensation expenses
15 related to employee stock options. ***Despite being put on notice of potential
16 accounting issues by, among other things, material weakness letters sent by the
17 company's outside auditors, CEO Hong Liang Lu and former CFO Michael J.
18 Sophie failed to implement and maintain adequate internal controls and falsely
19 certified that UTSI's financial statements and books and records were accurate.***

15 10. Lu and Sophie also defrauded Class members by making materially false and
16 misleading statements about the demand for the Company's PAS systems and the Company's future
17 financial results. On 4/16/03 and 7/17/03, Lu and Sophie told investors that there was extraordinary
18 demand for the Company's PAS systems, that gross margins – a key metric closely followed by Wall
19 Street analysts – would be 34%-35% in 3Q03, 4Q03 and FY03, and that the billion-dollar backlog of
20 PAS orders and broadband equipment orders gave them a tremendous amount of visibility into
21 UTSI's future results.

22 11. Lu and Sophie knew there was no reasonable basis for these statements for several
23 reasons. First, they knew that China Telecom and China Netcom were substantially reducing orders
24 for PAS equipment by hundreds of millions of dollars in 2003, and that the reduced demand for PAS
25 equipment caused prices and gross margins to decline. Second, they knew gross margins were being
26 negatively impacted by widespread operational problems described as pervasive and systemic by
27 former UTSI employees that delayed the development and delivery of the Company's products, and
28 caused the Company to deliver and install defective products that delayed customer acceptance and

1 increased the costs of the backlogged sales. Third, Lu and Sophie knew the significant internal
2 control weaknesses precluded them from knowing if UTSI was properly accounting for revenues,
3 stock compensation expenses, related-party transactions, and goodwill.

4 12. UTSI originally reported a 31.8% gross margin for 3Q03, a 31% gross margin for
5 4Q03, and a 32.4% gross margin for FY03, not 34%-35%, confirming the substantially reduced
6 demand for PAS equipment, and the undisclosed operational problems prevented Lu and Sophie
7 from accurately forecasting the Company's future results. Indeed, PAS equipment gross margins
8 declined from 40% in 2002 to 32% in 2003. The restatements of the Company's financial results on
9 4/13/05, 6/1/06, and 10/10/07 caused the gross margins for 4Q03 and FY03 to decline to 29.1% and
10 the FY03 gross margin to decline to 31.6%, confirming the significant internal control weaknesses
11 also prevented Lu and Sophie from accurately forecasting UTSI's future results.

12 13. On 10/23/03, 1/9/04, and 1/22/04, Lu and Sophie represented that in 2004, UTSI
13 would report gross margins of 30%-32%, \$500-\$600 million of international revenues (sales outside
14 of China) and earnings per share ("EPS") of \$1.90-\$1.94. They assured investors that the guidance
15 was conservative, and that the billion-dollar backlog continued to give them tremendous visibility
16 into the Company's future results. Lu and Sophie continued to know there was no reasonable basis
17 for the guidance because of the reduced demand for the Company's PAS systems, the pervasive and
18 systemic operational problems, and the significant internal control weaknesses. Further, by 1/04, Lu
19 and Sophie also knew about another problem. Sales of PAS handsets – and the profitability of those
20 sales – were rapidly declining due to intense competition and increased costs.

21 14. On 4/27/04, UTSI reported a 1Q04 gross margin of 28.3%, substantially less than the
22 30%-32% Lu and Sophie told investors to expect, and lowered gross margin guidance. But Lu and
23 Sophie told investors that UTSI would report \$2.75 billion of revenues in 2004, and that gross
24 margins would increase throughout the year – to 27%-28% in 2Q04, to 29%-30% in 3Q04, and to
25 30%-31% in 4Q04. They also said the substantial decline in PAS handset gross margins from 25%
26 in 4Q03 to 21% in 1Q04 would be offset by (1) the sale of PAS handsets with internally designed
27
28

1 lower cost ASICs³; and (2) the sale of internally manufactured cellular handsets, when they knew
2 there were problems with the development of both that delayed their introduction.

3 15. On 7/27/04, UTSI reported a 25.6% gross margin for 2Q04, substantially less than the
4 30%-32% Lu and Sophie told investors to expect in 10/03 and 1/04, and the 27%-28% they told
5 investors to expect on 4/27/04. Lu and Sophie again lowered gross margin guidance to 27% for the
6 rest of the year. After knowing China Telecom and China Netcom had been reducing PAS
7 equipment orders by hundreds of millions of dollars in 2003 and 2004, and would not order any PAS
8 equipment in 3Q04, Lu and Sophie finally told investors that revenues from China PAS sales would
9 decline from \$2.1 billion in 2004 to \$1.5 billion in 2005.

10 16. But Lu and Sophie assured investors gross margins had reached a low point in 2Q04,
11 that the Company would report \$2.95-\$3.0 billion of revenue in 2004, including \$600 million from
12 higher margin international sales, and that EPS in 2004 would be \$1.65-\$1.70. Further, Lu and
13 Sophie said the Company would report \$4.0-\$4.3 billion of revenues in 2005 (including \$1.5 billion
14 from China PAS sales and \$1.2-\$1.3 billion from broadband sales), 27% gross margins, and EPS of
15 \$2.20. Lu and Sophie knew there was no reasonable basis for the guidance because of the
16 substantially reduced demand for PAS systems, the pervasive and systemic operational problems that
17 were delaying revenue recognition and increasing the costs of backlogged sales, and the significant
18 internal control weaknesses that prevented Lu and Sophie from knowing if UTSI was properly
19 reporting its financial results.

20 17. Lu and Sophie subsequently lowered the guidance, UTSI originally reported results
21 that were substantially less than the guidance, and then UTSI subsequently restated and reduced the
22 originally reported results. Lu and Sophie lowered the guidance for 2004 on 9/20/04, 10/26/04, and
23 1/6/05, and UTSI originally reported \$2.7 billion of revenue in 2004 (not \$3.0 billion), \$293 million
24 of international revenue (not \$600 million), a gross margin of 22.3% (not 27%-28%), and EPS of
25 \$0.64 (not \$1.65-\$1.70). Revenues were restated and reduced to \$2.58 billion, the gross margin was

26
27 ³ An ASIC, or Application Specific Integrated Circuit, is a custom designed chip for a specific
28 application.

1 restated and reduced to 22.1%, and EPS was restated and reduced to \$0.45. PAS equipment gross
2 margins declined from 32% in 2003 to 29% in 2004, PAS handset gross margins declined from 25%
3 in 2003 to 18% in 2004 and broadband gross margins declined from 53% in 2003 to 20% in 2004.

4 18. For 2005, the shortfalls were even larger. UTSI originally reported \$2.9 billion of
5 revenue (not \$4.3 billion) that was subsequently restated and reduced to \$2.87 billion. UTSI
6 originally reported \$968 million of revenues from sales of PAS equipment and handsets in 2005 (not
7 \$1.5 billion) that was subsequently restated and reduced to \$947 million. The Company originally
8 reported \$508 million of broadband revenues in 2005 (not \$1.2-\$1.3 billion) that was subsequently
9 restated and reduced to \$449 million. The Company originally reported a loss per share of \$4.16 in
10 2005 that was subsequently restated and reduced to a loss of \$4.55 per share. PAS equipment gross
11 margins declined from 29% in 2004 to 26% in 2005 and PAS handset gross margins declined from
12 18% in 2004 to 12% in 2005. Broadband gross margins increased to 31% in 2005 – solely due to a
13 suspect related-party transaction with SOFTBANK affiliate Japan Telecom – and then became
14 negative in 2006.

15 19. On 1/6/05, Sophie acknowledged that he and Lu could not accurately forecast the
16 Company's future results by stating that UTSI would provide guidance for only one quarter into the
17 future. But Lu and Sophie could not even do that. UTSI failed to report revenues, gross margins, or
18 EPS in line with guidance in 2Q05, 3Q05, and 4Q05, and then subsequently restated and reduced the
19 originally reported results.

20 20. The materially false and misleading statements and omissions caused the price of
21 UTSI's securities to trade at artificially inflated prices. From 2/21/03 to 8/21/03, the Company's
22 stock price increased 150% (compared to a 34% increase in the proxy peer group⁴ and a 32%
23 increase in the NASDAQ)⁵ and reached a Class Period high of \$45.36. The stock continued to trade

24 _____
25 ⁴ The proxy peer group ("PPG") is the S&P Wireless Telecommunication Services index,
26 which UTSI compared the performance of its stock to in the Company's Proxy Statements filed with
the SEC on 4/2/03, 4/7/04 and 4/18/05.

27 ⁵ "NASDAQ" refers to the National Association of Securities Dealers Automated Quotation
28 System.

1 in the \$30.00-\$40.00 range through 1/04, and Lu, Sophie, Wu, Toy, and other UTSI executives took
2 advantage of the inflated stock price by selling 1.62 million shares of their UTSI stock for more than
3 \$58 million, including sales of 250,421 shares that the Individual Defendants and other UTSI
4 executives acquired at illegally backdated exercise prices. They also used the inflated stock price to
5 raise \$475 million the Company needed to acquire cellular technologies and the handset division of
6 Audiovox Communications Corporation (“Audiovox”) to diversify UTSI’s product offerings and
7 reduce its dependence on the declining China PAS market. Indeed, Audiovox became the
8 Company’s Personal Communications Division (“PCD”) and comprised 67% of UTSI’s revenues in
9 2007.

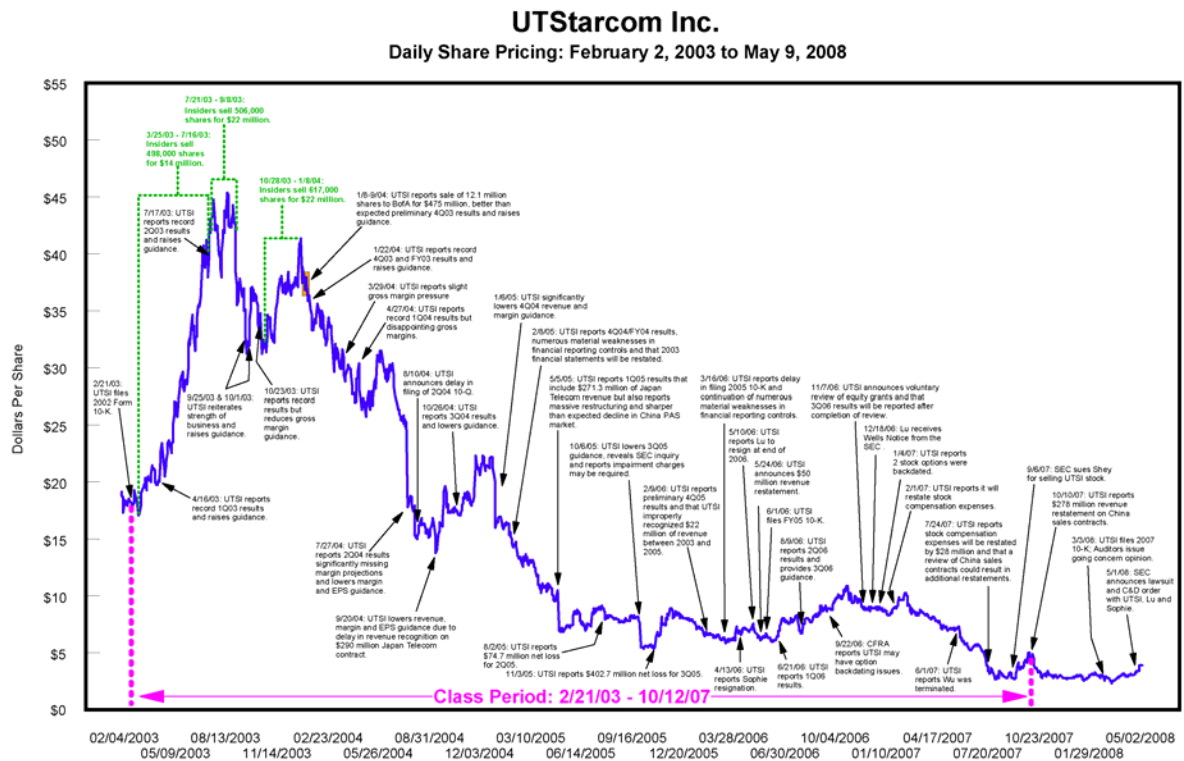
10 21. Class members who purchased UTSI securities at inflated prices were damaged when
11 the artificial inflation was removed from the stock price as UTSI began to partially reveal the
12 Company’s true financial condition.

13 22. The effects of the fraud have been devastating. The Company has restated its
14 financial statements three times and admitted that UTSI improperly recognized \$328 million in
15 revenue and improperly failed to record \$26.7 million of stock compensation expenses. Hundreds of
16 millions of dollars in asset impairment and other charges have been recorded. The Company has
17 also admitted that the numerous material weaknesses in UTSI’s financial reporting controls have not
18 been remedied and continue to plague the Company. The Company’s workforce has declined from
19 8,200 employees at the end of 2004 to 5,100 employees as of 12/31/07. The Company has hired
20 numerous additional accounting personnel, including a new CFO to replace defendant Sophie, who
21 suspiciously resigned in 4/06 just before the second restatement was disclosed. The Company
22 reported a \$533 million net loss in 2005, a \$117 million net loss in 2006, and a \$196 million net loss
23 in 2007, wiping out the \$471.5 million of earnings reported from 2000 to 2004. The Company’s
24 auditors have concluded there is now substantial doubt whether UTSI can continue as a going
25 concern.

26 23. The SEC has initiated multiple investigations of the Company, recommended a civil
27 injunctive suit against Lu alleging he violated §10(b) of the 1934 Act, and sued UTSI, Lu, and
28 Sophie for falsely certifying that UTSI’s financial statements, books, and records were accurate. The

SEC and the DOJ are investigating possible violations of the FCPA, which will probably result in sanctions, including fines, disgorgement, and an injunction. UTSI's stock price has not recovered and currently trades at less than \$5 per share. UTSI's market capitalization has declined more than 90% from \$4.5 billion in 8/03 to approximately \$500 million today.

24. The following chart (which is also attached hereto in foldout form) illustrates how the false and misleading statements and omissions caused the price of UTSI's securities to be inflated, and how Class members were damaged when the Company's true financial condition began to be revealed to the market:



II. JURISDICTION AND VENUE

25. The claims asserted arise under §§10(b), 14(a) and 20(a) of the 1934 Act (15 U.S.C. §§78j(b), 78n(a) and 78t(a)) and Rules 10b-5 and 14a-9 promulgated thereunder (17 C.F.R. §§240.10b-5 and 240.14a-9).

26. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§1331 and 1337 and §27 of the 1934 Act (15 U.S.C. §78aa).

27. Venue is proper pursuant to §27 of the 1934 Act. Defendant UTSI has its principal place of business at 1275 Harbor Bay Parkway, Suite 100, Alameda, California, and UTSI and/or the Individual Defendants conduct business in this District and the wrongful conduct took place here.

III. THE PARTIES

28. On 3/15/05, the Court appointed Locals 302 and 612 of the International Union of Operating Engineers-Employers Construction Industry Retirement Trust (the “Trust”) and Erwin DeBruycker as Lead Plaintiffs. The Trust is a pension fund that is responsible for investing billions of dollars in assets for the benefit of its participants. Mr. DeBruycker is a sophisticated investor with substantial experience in the telecommunications industry. Plaintiffs Robert Lee Weese and Gennadiy Sherman are individual investors. All plaintiffs suffered significant losses in connection with their transactions in UTSI stock, which are listed in Exhibit 1.

29. Defendant UTSI was founded in 1991 and completed its initial public offering (“IPO”) on 3/3/00, selling 11.5 million shares at \$18.00 per share for net proceeds of approximately \$189.4 million. On 8/3/01, the Company completed a follow-on offering and sold 7.4 million shares at \$20.00 per share for net proceeds of approximately \$140 million. On 3/12/03, the Company completed a private placement of \$402.5 million of convertible subordinated notes which were registered for resale in 8/03. On 1/9/04, the Company sold 12.1 million shares to Banc of America Securities LLC (“Banc of America”) at \$39.50 per share for net proceeds of approximately \$475 million. The Company is headquartered in Alameda, California, and listed on the NASDAQ.

30. Defendant Hong Liang Lu (“Lu”) was, throughout the Class Period, CEO, President and a director. Lu participated in the quarterly conference calls and assisted in the preparation of the false releases. Lu signed the false and misleading Forms 10-Q for 1Q03-2Q06, the Forms 10-K for FY02-FY05, and the Registration Statements filed in connection with the Class Period securities offerings. As required by §302 of the Sarbanes-Oxley Act of 2002 (“Sarbanes-Oxley”), Lu certified UTSI’s financial results were fairly presented and that the Company’s disclosure controls and procedures were adequate and effective. UTSI has since admitted these certifications were false. During the Class Period, Lu sold 215,000 shares of UTSI stock at inflated prices, for proceeds of over \$8.1 million.

31. Defendant Michael J. Sophie (“Sophie”) was, from the start of the Class Period until 9/05, CFO and Vice President (“VP”) of Finance. In 6/05, Sophie was “promoted” to Executive Vice President (“EVP”) and COO and replaced as CFO by Fran Barton (“Barton”). Sophie “resigned” in 4/06. Sophie participated in the quarterly conference calls and assisted in the preparation of the false releases. Sophie signed the false and misleading Forms 10-Q for 1Q03-2Q05 and the Forms 10-K for FY02-FY04. Sophie also certified UTSI’s financial results were fairly presented and that the Company’s disclosure controls and procedures were adequate and effective. During the Class Period, Sophie sold 228,322 shares of UTSI stock, for proceeds of over \$7.1 million.

32. Defendant Ying Wu (“Wu”) was a co-founder of the Company and until his termination in 6/07 was EVP and Vice Chairman of the Board of Directors of UTSI. Wu was also Chairman and CEO, and until 2/04, President of UTSI-China, UTSI’s Chinese subsidiary. Wu was also the founder and President of Starcom. Wu assisted in the preparation of the false statements issued to the market. Wu signed the false and misleading Registration Statements filed in connection with the securities offered during the Class Period and the Forms 10-K for FY02-FY05. During the Class Period, Wu sold 595,000 shares of UTSI stock at inflated prices, for proceeds of over \$22.8 million.

33. Defendant Thomas J. Toy (“Toy”) was, throughout the Class Period, a director of UTSI, chairman of the compensation committee and a member of the Audit Committee. Toy assisted in the preparation of the false statements issued to the market. Toy signed the false and misleading Registration Statements filed in connection with the Class Period securities offerings and the Forms 10-K for FY02-FY05, which contained false and misleading statements. During the Class Period, Toy sold 70,000 shares of UTSI stock at inflated prices, for proceeds of over \$2.7 million.

34. Defendant SBA, a Delaware corporation, is a wholly owned subsidiary of defendant SBH, a Delaware corporation, which is a wholly owned subsidiary of defendant SBC, a Japanese corporation. During the Class Period, non-party Masayoshi Son (“Son”) was the President, CEO, Chairman and largest shareholder of SBC. Son also was CEO and Chairman of SBH and Chairman of SBA. According to UTSI’s SEC filings and SBC’s website, Son was also (1) president and CEO

1 of SoftBank BB Corporation (“SBBC”), a subsidiary of SBC and customer of UTSI, and
 2 (2) Representative Director Chairman of Japan Telecom, a customer of UTSI.

3 35. Son co-founded UTSI and served as UTSI’s Chairman of the Board from 10/95 to
 4 3/03 and as a director until 9/15/04. UTSI reported in its 2002 Form 10-K that Son was **SBA’s**
 5 **designee** on UTSI’s Board and Son signed UTSI’s Forms 10-K for 2002 and 2003. According to
 6 UTSI’s 9/20/04 press release, Son resigned from the Board so that UTSI could comply with the
 7 NASDAQ requirement to have the Board “comprised of a majority of independent directors to
 8 **minimize conflicts of interests and improve corporate governance.**”

9 36. Defendants SOFTBANK and UTSI engaged in numerous related party transactions.
 10 SOFTBANK was the Company’s third largest customer and its largest stockholder. SOFTBANK
 11 owned 60% of the Company’s common stock at the time of UTSI’s IPO and had three Directors on
 12 the Board. On 4/5/03, UTSI repurchased eight million shares of the Company’s stock from
 13 SOFTBANK for \$139.6 million which reduced SOFTBANK’s ownership of UTSI’s shares from
 14 21.2% in 2002 to 14.1% in 2003. In 2004, SOFTBANK’s ownership of UTSI’s stock declined to
 15 12.8% because UTSI issued 12.1 million additional shares in 1/04. It was reported in SOFTBANK’s
 16 Schedule 13G filings and UTSI’s Proxy filings that the shares were registered in the name of SBA,
 17 but that SBC, SBH, SBA and Son were all beneficial owners of the shares and had the shared power
 18 to vote or dispose of the shares.

19 37. In its Form 10-K for 2002, 2003 and 2004, UTSI admitted that SOFTBANK’s stock
 20 ownership gave it the ability to significantly influence all matters submitted to the Company’s
 21 stockholders for approval, as well as UTSI’s management and affairs. In the 2004 Form 10-K, UTSI
 22 reported the following:

23 SOFTBANK CORP. and its related entities, including **SOFTBANK America, Inc.,**
 24 **have significant influence over our management and affairs, which it could**
exercise against the best interests of our stockholders.

25 **SOFTBANK CORP. and its related entities, including SOFTBANK**
 26 **America Inc. (collectively, “SOFTBANK”),** beneficially owned approximately
 27 12.8% of our outstanding stock as of December 31, 2004. As a result, **SOFTBANK**
has the ability to influence all matters submitted to our stockholders for approval,
as well as our management and affairs.

In addition, UTSI disclosed in its 2002 Form 10-K that SBA had the ability to control UTSI through Son:

SOFTBANK CORP. AND ITS RELATED ENTITIES, INCLUDING SOFTBANK AMERICA INC., HAS SIGNIFICANT INFLUENCE OVER OUR MANAGEMENT AND AFFAIRS, WHICH IT COULD EXERCISE AGAINST YOUR BEST INTERESTS

SOFTBANK CORP. and its related entities, including ***SOFTBANK America Inc., beneficially own 21.2% of our outstanding stock.*** As a result, SOFTBANK CORP. and its related entities, including SOFTBANK America Inc., ***have the ability to exercise significant influence over all matters submitted to our stockholders for approval and exert significant influence over our management and affairs.***

* * *

The interests of SOFTBANK America Inc. may not always coincide with our interests. ***SOFTBANK America Inc., acting through its designees [(i.e., Son)] on the Board of Directors and through its ownership of voting securities, will have the ability to exercise significant influence over our actions irrespective of the desires of our other stockholders or directors.*** On August 29, 2002, we completed the repurchase of six million shares of our common stock for \$72.9 million from SOFTBANK CORP., reducing their beneficial ownership to 21.2%.

38. SOFTBANK was also a customer, and UTSI reported the following amounts of sales to SOFTBANK from 2002 to 2007:

2002	2003	2004	2005	2006	2007
\$123 million	\$184.4 million	\$143.7 million	\$475.3 million	\$130.8 million	\$67.8 million

39. As detailed herein, there were problems with the broadband products sold to the SOFTBANK affiliates that delayed revenue recognition and increased costs.

40. UTSI also invested with SOFTBANK. Following the Company's 2000 IPO, UTSI invested \$10 million in SOFTBANK China, an investment fund established by SOFTBANK focused on investments in Internet companies in China. During 1Q02, the Company invested \$2 million in Restructuring Fund No. 1, a venture capital investment limited partnership established by an affiliate of SOFTBANK, which focuses on leveraged buyout investments in companies in Asia undergoing restructuring or bankruptcy proceedings. On 7/17/03, the Company entered into a \$10.1 million Mezzanine Loan Agreement and modem rental and service agreements with other SOFTBANK affiliates. UTSI and SOFTBANK Asia Infrastructure Fund ("SAIF"), a venture capital fund affiliated with SOFTBANK, invested in MDC Holdings Limited ("MDC") with UTSI's employees

1 owning 67% of MDC and holding key management positions. UTSI registered MDC's websites and
2 formed a strategic business relationship with MDC. UTSI failed to disclose this affiliated
3 transaction with SOFTBANK or its investment in MDC as required by GAAP until UTSI restated its
4 2003 financial statements on 4/13/05.

5 41. SOFTBANK also invested with China Netcom, one of UTSI's largest customers. On
6 1/30/03, CNN reported the U.S. bankruptcy court approved the purchase of Asia Global Crossing by
7 China Netcom and its partners, including SAIF.

8 **IV. CONFIDENTIAL WITNESSES**

9 42. Several of the allegations included herein are based on information provided by
10 several former UTSI employees referred to as confidential witnesses ("CW"). The information
11 provided by the former employees is reliable and credible because (1) each of the witnesses (except
12 CW9) worked at UTSI during the Class Period, (2) each witness stated they had personal knowledge
13 of the information provided, (3) the witnesses' job titles and responsibilities show they had personal
14 knowledge of the information provided, (4) many of the witness accounts corroborate one another
15 and (5) the witness accounts are corroborated by other information alleged herein.

16 43. CW1 was a supervisor for Order Processing at the Company's Alameda facility from
17 6/03 until 10/03. CW1 reported to controller Elsa Liu ("Liu"), who reported to VP of Finance Gloria
18 Fan ("Fan"), who reported to Sophie. CW1 supervised the staff that entered international sales
19 orders into the Company's QAD accounting system. CW1 stated the Company improperly recorded
20 revenue on orders that were entered into QAD as accepted even though the customer had not yet
21 accepted the sale. CW1 also said that costs of sales were understated on the orders entered into
22 QAD if the order did meet predetermined gross margin requirements.

23 44. CW2 was an order administration specialist from 9/03 to 12/03 when CW2 resigned.
24 CW2 reported to CW1 and controller Liu. CW2 entered international purchase orders into the QAD
25 system and also stated the orders were improperly entered as accepted and that costs of sale were
26 understated. CW2 has personal knowledge of the Company's manufacturing problems in China, as
27 CW2 handled product returns.

1 45. CW3 was a product manager at the Company's Alameda facility from 9/02 until 6/05
2 when CW3 was laid off as part of UTSI's 1,400 employee reduction in force. CW3 served as a
3 liaison between the UTSI sales operations personnel and the Hangzhou factory personnel to fulfill
4 customer orders. As explained below, CW3 has first hand knowledge about the Company's poor
5 internal controls and manufacturing processes, including the systemic part numbering problems that
6 led to delays in product delivery. CW3 also knew about problems with UTSI's broadband products,
7 including products sold to Japan Telecom.

8 46. CW4 was a manager of UTSI's ASIC Engineering Group at the Company's Fremont,
9 California facility from 4/04 until 8/04 when CW4 resigned. CW4 oversaw the development of an
10 ASIC that was intended for use in PAS handsets, and supervised a group of engineers, including the
11 engineers in Shanghai, China, for that project. As explained below, CW4 stated there were delays in
12 producing the ASICs which had not been resolved by 9/04 when CW4 resigned.

13 47. CW5 worked at 3Com Corporation ("3Com") prior to the 5/03 acquisition of
14 Commworks by UTSI and was a contract employee for UTSI until 6/05 when CW5 was laid off as
15 part of UTSI's 1,400 employee reduction in force. CW5 was involved with UTSI's effort to enter
16 the U.S. and Latin American cellular handset markets and said there were numerous problems with
17 the Company's Code Division Multiple Access ("CDMA") handsets that UTSI intended to sell
18 through the Audiovox channel.

19 48. CW6 was a director of field and customer marketing at UTSI from 3/03 to 10/05
20 when CW6 resigned. CW6 assisted prospective and current PAS customers with sales and
21 marketing plans to launch services using UTSI's PAS equipment. As explained herein, CW6 said
22 there were problems with the quality of PAS handsets sold in Vietnam that led to customer
23 complaints. In addition, CW6 stated UTSI's efforts to sell PAS in Africa were largely unsuccessful
24 and that coverage was terrible leading to regular complaints from subscribers. CW6 also said there
25 were a number of problems with UTSI's technology, including the Company's mVision TVoIP
26 (Television over Internet Protocol) technology that led to delays in customers, including DSSI LLC
27 ("DSSI"), providing final acceptance and paying for the equipment.

1 49. CW7 served as the VP of International Sales and Marketing from 5/02 to 4/05. CW7
2 reported directly to defendant Lu. CW7 was deposed by the SEC and said the SEC investigation
3 was focused on the related party deal between UTSI and Japan Telecom and the Company's
4 revenue recognition and financial reporting procedures and practices.

5 50. CW8 was a project manager for UTSI's research and development ("R&D") facility
6 in Iselin, New Jersey from 2000 to 3/05 when CW8 was laid off. CW8 managed, developed and
7 tested products manufactured by the Company. As detailed below, CW8 has personal knowledge of
8 the problems associated with the development of iAN-8000 equipment sold to Japan Telecom.

9 51. CW9 worked for DSSI for approximately four years as a senior network engineer
10 until 9/05 when CW9 resigned. CW9 tested and worked with the mVision and mSwitch equipment
11 UTSI supplied to DSSI and, like CW6, stated there were numerous problems with the equipment that
12 resulted in DSSI refusing to pay UTSI.

13 52. CW10 was an international product manager at UTSI's Hangzhou, China facility
14 from 6/03 through 9/04 when CW10 resigned. CW10 was responsible for wireline products,
15 wireless products, and Internet Protocol ("IP") switching solutions. CW10 stated that unethical
16 business conduct at UTSI was so widespread that everybody knew about them, including the
17 Company's practice of managing earnings and profits through accounting manipulations, such as
18 allocating or shifting profit or R&D costs to meet certain financial numbers.

19 53. CW11 was a billing supervisor at UTSI from 1/06 to 3/06 when CW11 was
20 terminated. CW11 was hired to help improve UTSI's billing controls. As detailed below, CW11
21 said there were millions of dollars of receivables included in the Oracle system for which UTSI did
22 not have supporting documentation to confirm the customer was ever billed and other receivable
23 balances are so old that collection is uncertain.

24 54. CW12 was UTSI's director of southeast operations for the Indian subcontinent from
25 2000 to 5/05 when CW12 resigned. CW12 worked in India and was responsible for establishing and
26 managing the Company's India operations. CW12 believed the \$22 million of improperly
27 recognized revenue reported by UTSI on 2/9/06 and restated on 5/24/06 was related to a transaction
28

1 with Reliance and that it was possible the revenue was improperly recognized to smooth out earnings
2 and report results in line with guidance.

3 55. CW13 was an engineering manager at UTSI from 11/04 to 5/06 when CW13
4 resigned. CW13 worked in the broadband business unit and led a team of engineers responsible for
5 designing and developing UTSI's NetRing product which was part of the GEPON (Gigabit Ethernet
6 Passive Optical Network) Fiber-to-the-Home ("FTTH") and IPTV (Internet Protocol Television)
7 offerings. CW13 described problems with the Company's broadband products in 2004 and 2005 that
8 caused SBBC to demand replacement of the defective product, incur millions of dollars in additional
9 expenses and UTSI to sue the supplier of chips it believed was the cause of the product problems.

10 56. CW14 was a manager of financial planning and analysis at UTSI from 3/06 to 8/06
11 when CW14 resigned. According to CW14, both Sophie and Fan were pushed out of the Company
12 because senior management wanted to get rid of the regime that had caused so many problems.
13 CW14 also had concerns regarding the Company's revenue recognition practices because all revenue
14 recognized was based on Excel spreadsheets submitted by business units that (1) did not include
15 supporting documentation, (2) did include errors and (3) could not be reconciled with other reports.
16 In fact, CW14 left UTSI because of concerns about the Company's internal controls.

17 57. CW15 was a production manager at UTSI from 5/04 to 2/06 when CW15 resigned.
18 CW15 reported to production manager John Zhang who reported to Chief Technology Officer
19 William (Bill) Huang ("Huang"). CW15 was responsible for managing the contractors that were
20 manufacturing UTSI's ASIC chips for inclusion in the Company's PAS handsets. CW15 stated that
21 the first internally developed ASICs were shipped to the Company's Hangzhou facility in 9/05 for
22 incorporation into the PAS handsets. CW15 also said that Huang supervised the design and
23 development of the ASICs.

24 58. CW16 worked at 3Com prior to the 5/03 acquisition of 3Com's Commworks division
25 by UTSI and was a senior network system engineer and project manager at UTSI from 5/03 until
26 10/07 when CW16 was laid off. CW16 worked at the Company's Rolling Meadows, Illinois facility
27 and in Pensacola, Florida. As detailed below, CW16 described problems with the mVision TVoIP
28 product sold to DSSI that led to the contract being canceled, the failure of the Company's R&D

1 engineers in China to resolve product quality issues, and the failure of the Company's R&D
2 engineers in China to maintain necessary documentation on the development of products that
3 prevented the identification of why products were failing. In addition, CW16 said that customers
4 refused to pay for product because contract terms had not been satisfied and that in 2004 and 2005
5 the Company's auditors, PricewaterhouseCoopers LLP ("PWC"), told UTSI it had to reverse
6 revenues improperly recognized on contracts that included service requirements that had not been
7 fulfilled.

8 59. CW17 worked at 3Com prior to the 5/03 acquisition of 3Com's Commworks division
9 by UTSI and was a senior service logistics operations manager at UTSI from 5/03 until 1/08 when
10 CW17 was laid off. CW17 was responsible for managing the repair of products returned by UTSI
11 customers. As detailed below, CW17 described problems with manufacturing that caused product
12 problems, the failure of the Company's manufacturing personnel to maintain necessary
13 documentation on the development of products that prevented the identification of why products
14 were failing, and the Company's manufacturing personnel changing part numbers which prevented
15 or delayed products clearing customs.

16 60. CW18 was a senior manager for sales operations in the Asia Pacific region and India
17 from 5/05 until 5/06 when CW18 resigned. CW18 was responsible for negotiating contracts with
18 existing and potential customers. As detailed below, CW18 stated that UTSI was experiencing
19 considerable issues with revenue recognition before and during the time CW18 was employed by
20 UTSI. CW18 said the revenue recognition issues involved contracts with maintenance and warranty
21 obligations, that the Company failed to validate the terms of sales before recognizing revenue and
22 that UTSI lacked documentation to support revenue that was recognized.

23 61. CW19 was a national accounts manager at UTSI from 2/06 until 4/07 when CW19
24 was terminated. CW19 was responsible for selling hardened IP DSLAMs (Digital Subscriber Line
25 Access Modules), the mVision IPTV product and Commworks voicemail systems. As detailed
26 below, CW19 said that there were quality issues with the products CW19 was responsible for selling.

27 62. CW20 held a number of accounting positions at UTSI for six years including revenue
28 controller from 2Q05 until CW20 resigned in the second half of 2007. As detailed herein, CW20

1 knew about the Japan Telecom transaction, reviewed historical data on the transaction and said that
 2 the Japanese subsidiary created by UTSI for the Japan Telecom transaction, Global Telecom Sales &
 3 Marketing K.K. (“GTSM”), was used to pass through money to Japan Telecom and did not do a lot
 4 of marketing even though the terms of the 8/20/04 contract required UTSI to perform sales
 5 promotion activities. CW20 also said broadband products like IPTV sold to SOFTBANK affiliates
 6 did not take off as anticipated. CW20 said the side letter agreement on the transaction with Reliance
 7 Telecom that required UTSI to provide system upgrades required UTSI to restate and reduce
 8 revenues by \$22 million between 2003 and 2005. CW20 said Reliance Telecom was generally not
 9 happy with the features of the AN2k digital loop carrier product purchased from UTSI and that the
 10 side agreement required UTSI to deliver additional features that Reliance desired.

11 63. CW21 was a senior design engineer manager at UTSI in China during the first half of
 12 2003 until his contract expired. CW21 said that UTSI was building more PAS infrastructure
 13 equipment than was needed in 2003 given the excess capacity on existing PAS networks, and also
 14 said that China Netcom was typically very slow in paying UTSI.

15 **V. DEFENDANTS’ FALSE AND MISLEADING STATEMENTS DURING** 16 **THE CLASS PERIOD**

17 64. **Recipient of alleged false statements:** This Court’s 3/20/07 Order directed Lead
 18 Plaintiffs to “[d]escribe the person or entity to whom the [alleged false] statement was made and
 19 how the recipient recorded or captured the statement.” Each alleged false statement was made to the
 20 public at large (including plaintiffs and Class members) in UTSI press releases, during conference
 21 calls or in reports UTSI filed with the SEC. These statements were repeated to the market in reports
 22 issued by analysts. The public relied upon the integrity of the efficient NASDAQ market to reflect
 23 all public information in UTSI’s stock price.

24 65. **Loss causation/extent of loss:** This Court’s 3/20/07 Order directed Lead Plaintiffs to
 25 allege the “[d]ate of loss,” the “[n]ature of loss,” and the “[e]xtent of loss” caused by each alleged
 26 false statement. The dates and nature of the losses are alleged herein. The extent or amount of loss
 27 is the difference between the inflated price Lead Plaintiffs and Class members paid for the stock and
 28 the non-inflated price the stock would have been if UTSI’s true condition was public. Any award of

damages, however, cannot exceed the difference between the inflated price paid for the stock and the mean trading price of the stock during the 90 days after the Class Period. 15 U.S.C. §78u-4(e)(1). The *precise* amount of inflation per share during the Class Period and the corresponding loss is the subject of expert analysis and opinion.

A. Lu, Sophie, Wu and Toy Falsely Represented that UTSI's Financial Results Were Fairly Presented in All Material Respects and that Lu and Sophie Had Designed, Maintained and Evaluated the Company's Disclosure Controls and Procedures and Concluded They Were Adequate and Effective

66. **Date of Statements and Statements:** UTSI reported the following false financial results during the Class Period. As shown in the following table, the financial results were originally reported in press releases, and then repeated during the Company's conference calls and in the Forms 10-Q and 10-K filed with the SEC (\$ in millions, except EPS):

Period	F02	1Q03	2Q03	3Q03	4Q03	F03	1Q04	2Q04	3Q04	4Q04
Date of Press Release and Conference Call	N/A	4/16/03	7/17/03	10/23/03	1/22/04	1/22/04	4/27/04	7/27/04	10/26/04	2/8/05
Date of 10-Q or 10-K	2/21/03	5/12/03	8/4/03	11/12/03	N/A	3/9/04	5/10/04	8/16/04	11/9/04	N/A
Revenues	\$981.8	\$330.5	\$405.8	\$584.4	\$643.6	\$1,964.3	\$622.3	\$689.6	\$645	\$746.6
Stock Compensation Expenses	\$3.957	\$0.499	\$1.681	\$0.115	\$0.776	\$3.071	\$0.055	\$0.120	\$0.059	\$0.136
Net Income (Loss)	\$107.9	\$37.3	\$39.4	\$59.1	\$66.4	\$202.3	\$54.8	\$43.9	\$4.9	\$(30.2)
Basic EPS	\$0.98	\$0.35	\$0.39	\$0.58	\$0.64	\$1.95	\$0.48	\$0.39	\$0.04	\$(0.26)
Diluted EPS	\$0.94	\$0.33	\$0.32	\$0.45	\$0.53	\$1.64	\$0.39	\$0.32	\$0.04	\$(0.22)
Goodwill										\$180.6

Period	F04	1Q05	2Q05	3Q05	4Q05	F05	1Q06	2Q06
Date of Press Release and Conference Call	2/8/05	5/5/05	8/2/05	11/3/05	2/9/06	6/1/06	6/21/06	8/9/06
Date of 10-Q or 10-K	4/15/05	5/10/05	8/9/05	11/10/05	N/A	6/1/06	6/22/06	8/9/06
Revenues	\$2,703.6	\$901.8	\$722.9	\$635.3	\$675.7 or \$685.5	\$2,929.3	\$596.6	\$549.1
Stock Compensation Expenses	\$0.370	\$0.409	\$0.412	\$0.372	\$0.961	\$2.154	\$4.159	\$4.610
Net Income		\$38	\$(74.7)	\$(402.6)	\$(45.3)	\$(487.4)	\$(10.6)	\$(21.4)

(Loss)	\$73.4				or (\$20.6)			
					(\$0.39)			
Basic EPS	\$0.64	\$0.33	\$(0.65)	(\$3.40)	or (\$0.17)	(\$4.16)	(\$0.09)	(\$0.18)
Diluted EPS	\$0.54	\$0.29	\$(0.65)	(\$3.40)	(\$0.39) or (\$0.17)	(\$4.16)	(\$0.09)	(\$0.18)
Goodwill	\$180.6	\$195.8	\$196.0					

In addition, it was falsely represented in each Form 10-Q and 10-K listed in the above table that

UTSI adhered to the following accounting policies:

Revenues from sales of telecommunications equipment and handsets are recognized when persuasive evidence of an arrangement exists, delivery of the product has occurred, customer acceptance has been obtained, the fee is fixed or determinable and collectability is reasonably assured. . . .

* * *

The Company accounts for employee stock option grants in accordance with Accounting Principles Board Opinion No. 25 Under APB 25, compensation expense is based on the difference, if any, on the date of grant between the fair value of the common stock and the exercise price of the option.

* * *

The exercise price of ISOs granted under the 1997 plan may not be less than 100% of the fair market value of common stock on the grant date

* * *

Under the terms of the 2001 Director Option Plan, the exercise price of each option granted is equal to the market value of the common stock on the date of grant.

67. Further, as required by §302 of the Sarbanes-Oxley, Lu and Sophie expressly certified that (1) they had “reviewed” the Forms 10-K and 10-Q, (2) the Forms 10-K and 10-Q did “not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading,” and (3) UTSI’s financial statements were “fairly present[ed] in all material respects.” To assure investors that Lu and Sophie had a legitimate basis for making these statements, and to prevent them from later claiming to be unaware of material information that rendered the Forms 10-K and 10-Q false, Lu and Sophie also certified (until 3/31/05) that (1) they were each “responsible for establishing and maintaining [UTSI’s] disclosure controls and procedures,” (2) they had

“designed such disclosure controls and procedures to ensure that material information . . . is made known to [them] by others” within UTSI during the period covered by the report, (3) they had personally “evaluated the effectiveness of [UTSI’s] disclosure controls and procedures” and concluded they were “adequate and effective,” and (4) they had “disclosed . . . to [UTSI’s] auditors and the Audit Committee . . . all significant deficiencies in the design or operation of internal controls . . . and any fraud . . . that involves management or other employees.”

68. In the Forms 10-K filed on 2/21/03 and 3/9/04 and the Forms 10-Q filed on 2/21/03, 5/12/03, 8/4/03, 11/12/03, 5/10/04, 8/16/04 and 11/9/04, each of the Individual Defendants represented that:

Our chief executive officer and our chief financial officer, after evaluating the effectiveness of [UTSI’s] disclosure controls and procedures . . . as of a date (the “Evaluation Date”) within 90 days before the filing date of this [Form 10-Q or Form 10-K], have concluded that as of the Evaluation Date, our disclosure controls and procedures are effective to ensure that information that we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms.

69. On 3/31/05, Lu and Sophie admitted UTSI’s disclosure controls and procedures were **not** effective but riddled with numerous material weaknesses that made it more than a remote likelihood material misstatements in the Company’s financial statements would not be prevented or detected. Even after acknowledging the ineffective disclosure controls and procedures, Lu and Sophie continued to falsely represent UTSI’s financial results were fairly presented in all material respects.

70. **Identity of authors:** The statements in the press releases and the Forms 10-Q and 10-K are attributed to each of the Individual Defendants because they were the senior officers at UTSI, and because the statements contained therein are reasonably presumed to be the collective actions of the Company’s officers. In addition:

- All of the press releases, Forms 10-K and Forms 10-Q were issued on behalf of UTSI, so the statements included therein are attributable to the Company.
- The statements in the 4/16/03, 7/17/03, 10/23/03, 1/22/04, 4/27/04, 7/27/04, 10/26/04, 2/8/05, 5/5/05, 8/2/05, 11/3/05, and 2/9/06 press releases are attributable to Lu and Sophie because (1) they were quoted in the press releases, (2) Sophie was listed as a source for some of the press releases, (3) Lu and Sophie repeated the financial results in the press releases during the conference calls and answered

1 questions about them, and (4) Sophie was the CFO of the Company and responsible
 2 for the reporting of the Company's financial results. The financial results reported in
 3 the 6/1/06, 6/21/06 and 8/9/06 press releases are attributable to Lu because he was
 4 quoted in the press releases and attended the conference calls where the financial
 5 results were repeated.

- 6 • The financial results reported in the press releases were repeated by Lu and Sophie
 7 during the conference calls on 4/16/03, 7/17/03, 10/23/03, 1/22/04, 4/27/04, 7/27/04,
 8 10/26/04, 2/8/05, 5/5/05, 8/2/05, 11/3/05, and 2/9/06. The financial results repeated
 9 during the conference calls on 6/21/06 and 8/9/06 are attributable to Lu because he
 10 attended the conference calls.
- 11 • Lu, Sophie, Wu and Toy signed the 2002 Form 10-K filed on 2/21/03, the 2003 Form
 12 10-K filed on 3/9/04, and the 2004 Form 10-K filed on 4/15/05. Lu, Wu and Toy
 13 signed the 2005 Form 10-K filed on 6/1/06. Lu and Sophie signed the Forms 10-Q
 14 filed on 5/12/03, 8/4/03, 11/12/03, 5/10/04, 8/16/04, 11/9/04, 5/10/05, and 8/9/05.
 15 Lu signed the Forms 10-Q filed on 11/10/05, 6/22/06 and 8/9/06.
- 16 • As a member of the Audit Committee, Toy reviewed and approved the quarterly
 17 earnings releases, the Forms 10-Q and Forms 10-K. It was reported in UTSI's Proxy
 18 Statements that the Audit Committee (1) reviewed the Company's quarterly earnings
 19 prior to the public release of the information, (2) provided oversight and monitoring
 20 of Company management and their activities with respect to the Company's financial
 21 reporting process, (3) reviewed and approved non-audit services of the independent
 22 auditors, (4) reviewed compliance with UTSI's existing major accounting and
 23 financial reporting policies, and (5) reviewed the results of the audit with the
 24 independent auditors and the Company's management.
- 25 • Lead Plaintiffs allege that the statements contained in the quarterly earnings releases
 26 and the Forms 10-Q are attributable to Wu because he signed the Forms 10-K for
 27 2002-2005, and because he was the President and CEO of the Company's Chinese
 28 subsidiary that accounted for a majority of the Company's sales.
- Lu and Sophie signed the certifications required by the Sarbanes-Oxley that were
 included in the Forms 10-K filed on 2/21/03, 3/9/04 and 4/15/05 and in the Forms
 10-Q that were filed on 5/12/03, 8/4/03, 11/12/03, 5/10/04, 8/16/04, 11/9/04, 5/10/05,
 and 8/9/05. Lu signed the certifications required by the Sarbanes-Oxley that were
 included in the Form 10-K filed on 6/1/06 and the Forms 10-Q filed on 11/10/05,
 6/22/06 and 8/9/06.

71. **True facts:** The restatements of UTSI's financial results and the Company's
 admissions that there were (and still are) numerous material weaknesses with its disclosure controls
 and procedures establish that (1) revenues were overstated and recognized before customer
 acceptance, (2) stock option compensation expenses were materially understated, (3) net income and
 EPS were materially overstated, (4) UTSI did not account for employee stock option grants in

accordance with Accounting Principles Board Opinion No. 25 ("APB 25"), (5) the exercise prices of stock options were not the market values of the stock on the dates of the grants, and (6) the Sarbanes-Oxley certifications were false and misleading.

72. **The First Restatement:** On 4/13/05, the Company announced the first restatement reduced pretax income in 4Q03 by 11% from \$88.5 million to \$78.7 million, and also reduced the Company's 4Q03 gross margin from 31.0% to 29.2%, and the F/03 gross margin from 32.4% to 31.8%. UTSI's 4Q03 and FY03 financial results were originally misstated because the Company failed to record a \$7.5 million inventory impairment charge by failing to consolidate the results of MDC, a related-party Chinese company that was formed in 2001 to provide value-added services to UTSI products.

73. **The Second Restatement:** On 5/24/06, the Company announced it would have to restate its financial statements a second time. The press release stated in part:

As a result of the findings of the investigation, *the Company will restate revenues and earnings for the fiscal years ended 2003 and 2004, and for each fiscal quarter within these fiscal years, and for the first three quarters of 2005.* The aggregate impact of the error corrections over the restatement periods have the effect of *reducing previously reported revenue by approximately \$49.6 million and net income by approximately \$11.8 million.*

74. As detailed in Exhibit 2, net sales, net income and EPS were misstated in every quarter in 2003, 2004 and the first three quarters of 2005, and were overstated by the following amounts in 2003, 2004 and the first three quarters of 2005 (\$ in millions, except EPS):

	<u>Previously Reported</u>	<u>As Restated</u>	<u>Adjustment</u>	<u>Percent Overstated</u>
2003 Net Sales	\$1,965.2	\$1,941.1	(\$24.1)	1.24%
2003 Net Income	\$215.6	\$209.9	(\$5.7)	2.7%
2003 EPS	\$2.07	\$2.02	(\$0.05)	2.9%
2004 Net Sales	\$2,703.6	\$2,684.4	(\$19.2)	0.72%
2004 Net Income	\$73.4	\$69.8	(\$3.6)	5.2%
2004 EPS	\$0.65	\$0.61	(\$0.04)	6.6%
1Q05-3Q05 Net Sales	\$2,260.1	\$2,253.7	(\$6.4)	0.3%
1Q05-3Q05 Net Income	(\$439.4)	(\$442.0)	(\$2.6)	0.6%
1Q05-3Q05 EPS	(\$3.72)	(\$3.75)	(\$0.03)	0.8%

75. **The Third Restatement:** On 2/1/07, UTSI announced it would have to restate its financial statements a third time because it failed to record stock compensation expenses in accordance with APB 25. On 10/10/07, UTSI issued restated financial statements and recorded \$26.7 million of additional stock option compensation expenses, which reduced net income by \$27.2 million as follows (\$ in 000s):

	1998	1999	2000	2001	2002	2003	2004	2005	1Q06	2Q06	Total
Originally Reported Stock Comp. Expense	\$294	\$3,957	\$8,238	\$3,706	\$2,209	\$3,071	\$370	\$2,154	\$4,159	\$4,610	\$32,768
Additional Stock Comp. Expense	\$1,244	\$0	\$556	\$4,870	\$8,110	\$12,470	(\$410)	(\$1,290)	\$662	\$504	\$26,716
Tax Increase (Decrease)	(\$448)	\$0	(\$104)	(\$942)	(\$1,550)	(\$1,381)	\$791	\$4,143	\$9	\$6	\$524
Reduction in Net Income	\$796	\$0	\$452	\$3,928	\$6,560	\$11,089	\$381	\$2,853	\$671	\$510	\$27,240

76. On 9/17/07, UTSI reported that it would have to restate an undisclosed amount of revenue improperly recognized on sales in China, and on 10/10/07, the Company reported that it had improperly reported \$278.6 million of revenue between 2000 and 2005, which caused net income to be overstated by \$97.7 million (\$ in millions):

	2000	2001	2002	2003	2004	2005	Total
Improperly Recognized Revenue	\$12,408	\$17,154	\$64,732	\$21,060	\$104,965	\$58,232	\$278,551
Overstatement of Net Income	\$4,781	\$5,779	\$19,697	\$6,382	\$18,594	\$42,433	\$97,666

77. **Combined Impact of the Three Restatements:** UTSI did not report the impact of the third restatement on the Company's quarterly financial results from 1998 to 2004. The combined impact of the restatements for 2000-2005 is summarized in the table below (\$ in millions, except EPS):

Period	2000	2001	2002	2003	2004	2005
Originally Reported Revenues	\$368.6	\$612.9	\$981.8	\$1,965.2	\$2,703.6	\$2,929.3
Restated Revenue	\$356.2	\$595.7	\$917.1	\$1,920.1	\$2,579.4	\$2,871.1
Amount Overstated	\$12.4	\$17.2	\$64.7	\$45.1	\$124.2	\$58.2
Percent Overstated	3.5%	2.9%	7.1%	2.3%	4.8%	2.0%
Originally Reported Stock-Based Compensation Expense	\$8.238	\$3.706	\$2.209	\$3.071	\$0.370	\$2.154
Restated Stock-Based Compensation Expenses	\$8.690	\$7.634	\$8,769	\$13.260	\$0.210	\$4.947
Amount Understated	\$0.452	\$3.928	\$6.560	\$10.189	N/A	\$2.793
Percent Understated	5.5%	106%	300%	332%	N/A	129%
Originally Reported Net Income (Loss)	\$27.0	\$56.9	\$107.9	\$202.3	\$73.4	(\$487.4)
Restated Net Income (Loss)	\$21.8	\$47.2	\$81.6	\$192.4	\$50.8	(\$532.6)
Amount Overstated	\$5.2	\$9.7	\$26.3	\$9.9	\$22.6	\$45.2
Percent Overstated	23.8%	20.6%	32.2%	5.2%	44.5%	9.3%
Originally Reported Diluted EPS	\$0.28	\$0.52	\$0.94	\$1.64	\$0.54	(\$4.16)
Restated Diluted EPS	N/R	N/R	\$0.71	\$1.56	\$0.40	(\$4.55)
Amount Overstated	N/R	N/R	\$0.23	\$0.08	\$0.14	\$0.39
Percent Overstated	N/R	N/R	32.4%	5.2%	35%	9.4%

78. **Scienter and factual basis for scienter:** The factual findings in the SEC C&D Order, the Company's explanations for the restatements, information provided by former UTSI employees, the magnitude and duration of the restatements, the positions of the Individual Defendants, Sophie's resignation, Wu's termination, and suspicious insider selling by each of the Individual Defendants and other UTSI executives raise a strong inference Lu, Sophie, Wu and Toy knew or were deliberately reckless in not knowing that UTSI was reporting materially false and misleading financial results and falsely representing the Company's disclosure controls and procedures were adequate and effective.

1 **1. Facts Raising a Strong Inference Lu, Sophie, Wu and Toy**
 2 **Knew There Were Significant Internal Control Weaknesses**
 Related to Revenue Recognition

3 79. **The SEC C&D Order:** On 5/1/08, the SEC announced it had filed suit against UTSI,
 4 Lu and Sophie in connection with the Company's false financial reports and recurring internal
 5 control deficiencies, that Lu and Sophie had agreed to pay civil penalties of \$100,000 and \$75,000
 6 respectively, and that UTSI, Lu and Sophie agreed to cease and desist from violating various
 7 sections of the 1934 Act. The SEC deemed it appropriate that cease-and-desist proceedings be
 8 instituted against UTSI, Lu and Sophie for their repeated false representations that (1) UTSI's
 9 quarterly and annual reports did not contain any misstatements or omit material information, (2) the
 10 reports disclosed all significant deficiencies in the design or operation of UTSI's internal controls,
 11 and (3) the reports fairly presented in all material respects UTSI's financial condition and results of
 12 operations.

13 80. The factual findings in the SEC C&D Order establish that (1) Lu, Sophie and the
 14 Company's Audit Committee (Toy was a member of the Audit Committee) knew it was a common
 15 practice at UTSI to supplement or amend sales contracts with side letters that contained non-standard
 16 product upgrade provisions precluding revenue recognition, (2) Lu, Sophie and the Company's
 17 Audit Committee received multiple Management Recommendation letters from UTSI's auditors
 18 ***beginning in 3/03***, detailing multiple and significant internal control weaknesses related to revenue
 19 recognition, including the need to "strengthen procedures to ensure side letters and contract
 20 amendments are communicated and accounted for in a timely manner," and (3) UTSI improperly
 21 recognized \$400 million of revenue between 2000 and 2005 on 84 sales transactions because sales
 22 contracts were amended or supplemented with product upgrade provisions that precluded revenue
 23 recognition.

24 81. ***The SEC concluded that Lu, Sophie and the Company's Audit Committee had been***
 25 ***on notice since at least March 2003 of significant internal control weaknesses, including the use***
 26 ***of side letters and contract amendments precluding revenue recognition that were not forwarded***
 27 ***by sales offices to the contract and finance departments.*** It was stated in the SEC C&D Order that
 28 UTSI sometimes used letter agreements or side letters to supplement or amend contractual terms,

1 and that in March 2003, the Company's auditors sent a Management Recommendation letter to Lu,
2 Sophie and the Audit Committee, detailing internal control weaknesses identified during the
3 December 31, 2002 year-end audit. Among other things, the letter specifically noted that UTSI
4 should "'strengthen procedures to ensure side letters and contract amendments are communicated
5 and accounted for in a timely manner.'" In its written response to the auditor's letter, UTSI said it
6 had implemented the necessary controls to track and monitor side letters and non-routine
7 transactions.

8 82. According to the SEC C&D Order, UTSI received another Management
9 Recommendation letter from its auditors in April 2004, detailing multiple internal control
10 weaknesses (many classified as material) identified during the December 31, 2003 year-end audit.
11 The letter was copied to Lu and Sophie, and again noted concerns about the use of side letters that
12 were not forwarded to the finance department. In its written response, UTSI said it had strengthened
13 controls to identify side letters. According to the SEC, UTSI also received management
14 recommendation letters from its auditors noting multiple material weaknesses in connection with the
15 2004 and 2005 year-end audits.

16 83. ***UTSI improperly recognized \$400 million of revenue on 84 sales transactions***
17 ***between 2000 and 2005 because side letters or side agreements promised future performance by***
18 ***UTSI.*** The SEC C&D Order and the Company's restatements confirm UTSI prematurely
19 recognized nearly \$50 million in net revenue between 2003 and 2005 on six international sales,
20 which were subject to side agreements that were not reviewed by the Company's finance personnel,
21 and prematurely recognized \$350 million in net revenue between 2000 and 2005 on 78 sales
22 transactions in China because the contracts contained non-standard product upgrade provisions
23 precluding revenue recognition that were not reviewed by the Company's finance personnel.
24 According to the SEC, UTSI sales personnel entered into contracts that contained non-standard
25 product upgrade provisions precluding revenue recognition. In some instances, sales personnel
26 documented the sales on two separate contracts, and only the company's standard contract (without
27 upgrade provisions) was made available to UTSI's finance personnel. Because these side
28

1 agreements promised future performance by UTSI, revenue should not have been recognized under
2 GAAP.

3 84. The SEC C&D Order described sales transactions with side letters that Lu and Sophie
4 knew about. For example, UTSI improperly recognized \$22 million of revenue from 2Q04 to 2Q05
5 on the sale of a network system to a purchaser in India. According to the SEC, at the time of sale,
6 securities analysts had expressed concerns about UTSI's ability to enter markets outside China, and
7 Lu specifically highlighted this deal as indicative of UTSI's success in gaining traction in India.

8 85. During 2Q04, the purchaser sent UTSI a final acceptance certificate, but included a
9 proposed side agreement requiring UTSI to upgrade the system after 2Q04. According to the SEC,
10 Lu and Sophie were aware of the proposed side agreement and knew that UTSI's revenue
11 recognition manager specifically admonished that approving the side agreement would prevent
12 revenue recognition. Lu personally communicated with the customer to request that they accept the
13 products without a side agreement.

14 86. Notwithstanding these directions, a UTSI sales executive signed a side agreement
15 with the purchaser, but failed to adequately disclose the agreement to finance personnel, resulting in
16 the improper recognition of revenue by UTSI. The SEC concluded that Lu and Sophie failed to take
17 adequate steps to determine how the customer's request for a side agreement had been resolved and
18 whether revenue recognition was appropriate.

19 87. During 2Q05, UTSI recognized additional revenue from the India sale. Once again, a
20 UTSI sales executive had signed a side letter making the customer's acceptance contingent on future
21 upgrades (and thus rendering revenue recognition improper under GAAP). According to the SEC,
22 Lu and Sophie were aware the customer had made such a request, but received a communication
23 from finance personnel that the final acceptance certificates received from the customer were
24 acceptable. Neither Lu nor Sophie took steps to determine how the issue was resolved and whether
25 revenue was properly recognized.

26 88. *The Company admitted revenues were restated because of significant internal*
27 *control weaknesses, and specifically because the sales transactions were not reviewed to determine*
28 *whether there were side agreements that amended or supplemented contract terms thereby*

1 ***precluding revenue recognition.*** In the 2005 Form 10-K filed on 6/1/06, UTSI reported that the \$22
2 million of revenue improperly recognized on the sale to the customer in India was the result of two
3 previously unknown side letter agreements provided to the customer in 2004 and 2005 that obligated
4 UTSI to deliver a variety of software bug fixes, features, updates and upgrades for no additional
5 consideration. It was also reported that \$13.3 million was improperly recognized in 2004 on three
6 significant international contracts because the terms were changed, and that \$3.1 million was
7 improperly recognized in 2005 because of UTSI's obligation for customer rebates and other sales
8 adjustments.

9 89. In its 2006 Form 10-K filed on 10/10/07, UTSI reported that \$278.6 million of
10 revenue was improperly recognized between 2000 and 2005 on 78 sales transactions in China
11 because the contracts "contained obligations for the Company to deliver software upgrades when and
12 if made available for the equipment sold for no additional consideration and for an unspecified
13 period that could extend over the term of the contract."

14 90. UTSI also acknowledged the \$278.6 million of revenue was improperly recognized
15 because of inadequate controls. The Company reported that the obligations to deliver free software
16 upgrades were included in the contract files but that the revenue was improperly recognized because
17 of the "failure to prevent or detect instances of override related to controls in China over customer
18 agreements, lack of proper management oversight, unclear record retention policies and procedures
19 relating to systems contracts, and inadequate employee training." UTSI acknowledged the need for
20 restating \$278.6 million of revenue was discovered by reviewing 1,200 contract files from several
21 sales offices in China and the electronic files of 45 employees, and by interviewing 96 employees.
22 In short, UTSI admitted the \$278.6 million of revenue was improperly recognized because contract
23 files were simply not reviewed.

24 91. To simply rely on the contract documentation submitted by the sales offices without
25 reviewing the actual files or confirming the terms of the transactions with the sales representatives or
26 customers given the common practice of using side letters to amend or supplement contract terms
27 and the repeated notices from the Company's auditors that there were multiple and significant
28 internal control weaknesses related to revenue recognition, including the need to "strengthen

1 procedures to ensure side letters and contract amendments are communicated and accounted for in a
2 timely manner,” raises a strong inference each of the Individual Defendants was at least deliberately
3 reckless in representing that the Company’s financial results were fairly presented in all material
4 respects, and that the Company’s disclosure controls and procedures were adequate and effective.

5 92. ***Information provided by former UTSI employees establishes that the revenue***
6 ***recognition problems – including the auditors’ concerns about revenue recognition – were well***
7 ***known throughout the Company.*** CW1 and CW2 said UTSI improperly recognized revenue and
8 understated the cost of UTSI’s international sales. CW1 knew UTSI regularly and improperly
9 recognized revenue before receiving customer acceptance because CW1 oversaw the UTSI order
10 processors, including CW2, who entered orders into the QAD order-entry system as accepted even
11 though acceptance contingencies were not met and customer acceptance not received. CW1 said the
12 purchase orders received from the international sales team led by Chuck Farrell included payment
13 terms, including the condition of receiving customer acceptance. CW1 said the order processing
14 personnel processed about 15 orders per day as accepted even though CW1 knew of only five
15 instances of UTSI actually receiving customer acceptance during the four months CW1 worked at
16 UTSI.

17 93. CW1 was also prevented from establishing a customer acceptance policy and cleaning
18 up the order processing division, the reason CW1 was initially hired. According to CW1, UTSI had
19 no written guidelines for when an order was to be entered as accepted and the only process was to
20 have the customer sign off on a document acknowledging acceptance of the product and satisfactory
21 installation. Liu told CW1 that the acceptance policy CW1 was trying to develop was too strict for
22 UTSI and often directed orders be incorrectly entered as accepted so revenue could be recognized.

23 94. Other witness accounts confirm that there were red flags that indicated revenues had
24 been and were being improperly recognized. CW11 was hired to improve UTSI’s billing controls
25 and was told in 1/06 that some of UTSI’s receivables were questionable. CW11 said UTSI
26 personnel in Japan, Taiwan, India and South America billed customers and managed collections and
27 manually documented the transactions on Excel spreadsheets that were sent to Alameda to be
28 entered into the Company’s Oracle accounting database. But CW11 said there were receivables

1 included in the Oracle system for which UTSI did not have supporting documentation to confirm the
2 customer was ever billed and other receivable balances so old that collection was uncertain.

3 95. During a 1/23/06 revenue recognition team meeting that CW11 attended, it was
4 reported that UTSI did not have evidence that an Indian customer had ever been invoiced for \$41
5 million of products shipped in 2005 and prior periods. CW11 also stated UTSI could not verify it
6 had billed \$20 million of revenue included on Excel spreadsheets received from UTSI's Asia-Pacific
7 region. In addition, CW11 said there were receivables recorded by UTSI personnel in Europe, the
8 Middle East and Africa that could not be verified. CW11 said the discrepancies between overseas
9 billings and UTSI's corporate accounting records were staggering. In some cases, UTSI's overseas
10 employees did not bill customers and in other cases, UTSI did not have documentation supporting
11 amounts that were billed. These issues were not resolved when CW11 left UTSI at the end of 3/06
12 and UTSI announced two revenue restatements after 3/06 that reduced revenues by \$328 million.
13 CW14, the manager of financial planning, stated that revenue was recognized even though the Excel
14 spreadsheets contained errors, did not include supporting documentation and could not be reconciled
15 with other reports.

16 96. CW18 said UTSI was experiencing considerable revenue recognition issues when
17 CW18 joined the Company in 5/05. CW18 said that the Company and its auditors, PWC, discovered
18 that UTSI had improperly recognized revenue on a number of contracts before fulfilling maintenance
19 and warranty obligations required by the contracts. CW18 explained that UTSI failed to validate the
20 terms of sales submitted by personnel outside North America which led to the revenue being
21 improperly recognized. Specifically, CW18 said that the Company's regional personnel prepared
22 excel spreadsheets to report sales from their respective regions that were submitted to corporate
23 finance and accounting personnel in Alameda. The corporate finance and accounting personnel did
24 not validate the sales including whether the customer had provided final acceptance. CW18 said that
25 revenues had to be reversed on a contract with Reliance in India for this reason. In addition, CW18
26 said that UTSI had to reverse revenues previously recognized because it did not have documentation
27 supporting when the revenue was recognized.

1 97. CW16 also said that PWC was giving UTSI a terrible time in 2004 and 2005
2 regarding revenues that had been recognized on contracts that included maintenance obligations and
3 installation obligations. CW16 said UTSI recognized revenue after completing installation but
4 before the maintenance obligations had been fulfilled that PWC required to be reversed. CW16 said
5 that revenues had to be reversed on contracts with Reliance in India and contracts with Sprint PCS,
6 Verizon and AT&T. CW17 also was told by colleagues in Rolling Meadows that some Indian
7 customers were refusing to pay UTSI.

8 98. CW16 also said UTSI improperly recognized revenue on other sales. For example, in
9 2004 CW16 reviewed contracts with customers that were not paying for CDMA and GSM (global
10 system for mobile) IP-based cellular phone switches purchased from TELOS Technology, Inc.
11 (“TELOS”), a company UTSI acquired in 4/04. CW16 discovered that UTSI had improperly
12 recognized approximately \$1.6 million of revenues because TELOS had failed to perform
13 professional services required by the contracts. From 2004 to 2006, CW16 said UTSI provided the
14 professional services (which increased the costs of the sales) and the customers paid UTSI the
15 amounts due under the contract.

16 99. ***The Individual Defendants knew adequate and effective disclosure controls and***
17 ***procedures were particularly important at UTSI.*** Each of the Individual Defendants knew that
18 adequate disclosure controls and procedures were particularly important for several reasons. First, as
19 reported in the 2002 Form 10-K, each of the Individual Defendants knew (1) UTSI’s growth had
20 placed “significant strain on our management, operational, financial and other resources,” and (2)
21 UTSI had to “continue to expand . . . operations to address potential market opportunities,” that
22 would “continue to place a significant strain on our management, operational, financial and other
23 resources.”

24 100. Second, as disclosed in the SEC C&D Order and the Company’s Forms 10-K, each of
25 the Individual Defendants knew that sales in China accounted for 86% and 79% of UTSI’s revenue
26 in 2003 and 2004, respectively, and that personnel at the Company’s regional sales offices in China
27 executed the contracts and were responsible for forwarding them to the Company’s China
28 headquarters for accounting purposes. Similarly, sales personnel in countries outside of China were

1 responsible for forwarding contracts to the Company's Alameda headquarters for accounting
2 purposes. Third, Lu, Sophie, Wu and Toy knew it was a common practice at UTSI to supplement or
3 amend sales contracts with side letters that contained non-standard product upgrade provisions
4 precluding revenue recognition. Fourth, the Company's auditors repeatedly told Lu, Sophie and the
5 UTSI Audit Committee that there were significant internal control weaknesses related to revenue
6 recognition, including the fact that side letters and contract amendments introducing revenue
7 contingencies were not forwarded by sales offices to the contract and finance departments.

8 101. *The terminations and resignations of all the Individual Defendants except Toy*
9 *strengthen the inference each was at least deliberately reckless in representing that the*
10 *Company's financial results were fairly presented in all material respects and that UTSI's*
11 *disclosure controls and procedures were adequate and effective.* The Company publicly disclosed
12 Sophie's resignation on 4/13/06 as UTSI and the SEC were conducting investigations of the
13 Company's financial reporting and just before the second restatement was publicly disclosed on
14 5/24/06. CW14 stated that Sophie and Fan, UTSI's VP of Finance and direct report to Sophie who
15 also resigned by 4/06, were pushed out of the Company because senior management wanted to get
16 rid of the regime that caused so many problems.

17 102. On 5/10/06, the Company announced Lu would resign by the end of the year and be
18 replaced by Wu. On 10/11/06, UTSI announced that Wu would not replace Lu as CEO because the
19 Board had asked Wu to oversee the Company's exploring of strategic alternatives to enhance
20 shareholder value. On 12/22/06, UTSI reported that Lu would remain as CEO until the completion
21 of strategic alternatives process. In the same release, UTSI stunned investors by disclosing that Lu
22 had received a Wells Notice from the SEC in connection with an ongoing investigation into trading
23 activities by third parties, and that the staff of the SEC had recommended the SEC file a civil
24 injunctive action against Lu alleging he violated §10(b) of the 1934 Act. On 6/28/07, UTSI
25 announced that Peter Blackmore was hired to replace Lu as President and that he would succeed Lu
26 as CEO within the next year.

27 103. The only plausible inference from the termination of Wu in 6/07 is that he knew of
28 the improprieties that led to the \$278.6 million revenue restatement. Wu was the President of UTSI-

China where 78 sales transactions were improperly accounted for. Before being terminated, the Company announced on 5/10/06 that he would succeed Lu as UTSI's CEO, and then on 10/11/06, the Company announced that Wu would not take over as CEO and instead would lead the effort to explore strategic alternatives with Merrill Lynch & Co., Inc. On 6/1/07, however, UTSI announced that the strategic alternatives process had been concluded, that the Company would continue to operate as a separate entity and that Wu had been terminated as EVP and CEO of UTSI-China. Then on 7/24/07, UTSI announced that Wu had resigned from the Board of Directors, and that the Company was investigating historical sales contracts with customers in China. On 9/17/07, UTSI announced it had completed the China sales investigation and would have to restate its financial statements by an undisclosed amount, and on 10/10/07, the Company announced it had improperly recognized \$278.6 million of revenue over six years on 78 China sales transactions.

104. *Wu knew or was deliberately reckless in not knowing that UTSI was reporting materially false and misleading financial results and falsely representing the Company's disclosure controls and procedures were adequate and effective.* The fact that the Company's auditors repeatedly told Lu, Sophie, Toy and the other members of UTSI's Audit Committee that there were significant internal control weaknesses, including the failure to forward side agreements to the Company's finance department, strongly infers that Wu also knew about the problem. So do the witness accounts because they reveal that the revenue recognition problems – including the auditors' concerns about the problems – were known throughout the Company, including employees who did not work at UTSI's corporate office in Alameda, California or in China. The magnitude and duration of the revenue restatements (\$400 million improperly recognized on 84 sales transactions over six years) establish the problems were widespread and bolster the inference Wu knew about the revenue recognition problems. The acknowledged importance of maintaining adequate and effective disclosure controls and procedures given UTSI's rapid growth, the fact that a majority of revenues were generated in China, and the common use of side letters and side agreements further strengthens the inference that Wu knew about the problems. Finally, the suspicious insider selling by each of the Individual Defendants and the termination of Wu strongly infer he knew about the problems.

2. Facts Raising a Strong Inference Lu, Sophie, Wu and Toy Knew There Were Insufficient Controls in Place to Assure Sales Were Not Obtained by Bribing Foreign Government Officials in Violation of the FCPA

105. The repeated and significant internal control weaknesses at UTSI during the Class Period, a series of disclosures by UTSI from 2006 to 2008 that the Company had possibly violated the FCPA by bribing foreign government officials to obtain sales in China, Mongolia, India and Southeast Asia, the unwinding of the Company's Mongolian joint venture after the UTSI Audit Committee completed its investigation of possible payments to a Mongolian government official, and continuing investigations by the DOJ and SEC raise a strong inference Lu, Sophie, Wu and Toy knew there were not sufficient controls in place to ensure UTSI was not recognizing revenues on sales that were obtained by bribing foreign government officials.

106. The facts detailed above show that each of the Individual Defendants knew that (1) most of the Company's sales were generated in China, (2) at the end of 2002, the Company's business plan was expanded to sales in other foreign countries like India, Japan, and Thailand, (3) the finance departments in China and Alameda relied on the information provided from sales offices when recording revenues, and (4) PWC repeatedly told the Company that there were significant internal control weaknesses related to revenue recognition, including the fact that side letters and contract amendments introducing revenue contingencies were not forwarded by sales offices to the contract and finance departments. These facts put each of the Individual Defendants on notice that revenues were being recorded without sufficient controls in place to assure revenue recognition was permissible under GAAP.

107. When UTSI disclosed the need to restate its financial statements for these reasons in 5/06 and 6/06, it also disclosed in its 2005 Form 10-K filed on 6/1/06, that it was investigating allegations of improper payments – bribes – by people connected to the Company to government officials in Mongolia and India in violation of the FCPA. The disclosures indicated that revenue recognized on sales related to the illegal payments would have to be disgorged, and that the Company faced the prospects of monetary and non-monetary sanctions:

We have received notice of a formal inquiry by the staff of the Securities & Exchange Commission ("SEC") into certain aspects of our financial disclosures

1 during prior reporting periods and certain other issues. In addition, *in December*
 2 *2005 the U.S. Embassy in Mongolia informed us that it had forwarded to the*
 3 *Department of Justice (“DOJ”) allegations that an agent of our Mongolia joint*
 4 *venture had offered payments to a Mongolian government official in possible*
 5 *violation of the Foreign Corrupt Practices Act (the “FCPA”). In April 2006 we*
 6 *became aware that an agent of the Company may have made an offer to pay an*
 7 *Indian government official in possible violation of the FCPA.* We, through our
 8 Audit Committee, authorized an independent investigation into these matters, and we
 9 have been in contact with the DOJ and SEC regarding the investigation. . . . If the
 10 SEC or the DOJ makes a determination that we have violated federal laws, *we may*
 11 *face sanctions including, but not limited to, fines, disgorgement and an injunction.*
 12 Additionally, such a determination by the SEC or the DOJ could adversely affect our
 13 stock price. It is also possible that the findings and outcome of these inquiries may
 14 affect other lawsuits that are pending.

15 108. In its 2Q06 Form 10-Q filed two months later on 8/9/06, UTSI disclosed that in 6/06,
 16 it became aware that a former employee of the Company may have made a payment to a Thailand
 17 government official in possible violation of the FCPA. On 7/19/07, UTSI filed a Form 8-K in which
 18 it disclosed the Company’s investigation had now identified possible FCPA violations in China.
 19 Five days later, UTSI disclosed it was reviewing sales contracts in China that could result additional
 20 restatements, and then on 10/10/07, UTSI reported that it had improperly recognized \$278.6 million
 21 of revenue between 2000 and 2005 on sales made in China.

22 109. Disclosures in the SEC Reports strongly infer illegal payments were made to a
 23 Mongolian government official, which caused UTSI to report false financial results in 2005.
 24 According to UTSI’s FY05 Form 10-K, the Mongolian joint venture was established in 1Q05 to
 25 install, develop and operate a PAS network in Mongolia, and consolidation of the joint venture
 26 resulted in a \$6 million increase in both total assets and total liabilities and equity. According to
 27 UTSI’s 2Q06 Form 10-Q, as a result of the Audit Committee’s investigation, UTSI terminated the
 28 joint venture and incurred a \$5.9 million expense to write off the assets of the joint venture, and a
 \$2.6 million expense to cover VAT (Value-Added Tax) liability as of 12/31/05. The termination of
 the joint venture and related expenses indicate the joint venture illegally obtained the contract to
 install, develop and operate the PAS network, and that assets and capital were overstated in 2005 and
 1Q06.

110. The DOJ and SEC continue to investigate the numerous cases of FCPA violations. In
 UTSI’s 2007 Form 10-K, it was disclosed that (1) UTSI had been in contact with the DOJ and SEC

1 regarding its investigation of possible FCPA violations, (2) the DOJ had requested UTSI to
 2 voluntarily produce documents related to its investigation, (3) the SEC had subpoenaed the
 3 Company for documents, (4) the Company had received a Grand Jury Subpoena from the DOJ,
 4 requiring the production of documents related to one aspect of the DOJ's investigation and (5) the
 5 Company had executed tolling agreements extending the statute of limitations for the FCPA issues
 6 under investigation by the SEC and DOC and the immigration issues under investigation by the
 7 DOJ.

8 111. These facts strongly infer that UTSI will report additional violations of the FCPA,
 9 incur additional charges to unwind transactions, and incur charges to resolve the investigations by
 10 the SEC and the DOJ, and that each of the Individual Defendants was at least deliberately reckless in
 11 representing that UTSI's disclosure controls and procedures were effective and that the Company's
 12 financial results were fairly presented.

13 **3. Facts Raising a Strong Inference Lu, Sophie, Wu and Toy**
 14 **Knew UTSI Failed to Properly Account for Stock**
Compensation Expenses

15 112. **Magnitude and Duration of Stock Compensation Expense Restatement:** The
 16 Company has admitted that it improperly failed to record \$26.7 million of stock compensation
 17 expenses over eight years (1998-2Q06), and that stock compensation expenses were understated by
 18 5.5% in 2000, 106% in 2001, 300% in 2002, 332% in 2003 and 129% in 2005. In addition, the
 19 Company acknowledged in the 2006 Form 10-K filed on 10/10/07 that the restated amounts from
 20 2000 to 2005 covered 10.3 million stock options or 36% of the 28.8 million stock options granted
 21 between 2000 and 2005. UTSI reported that (1) 17.9 million stock options or 62% of the 28.8
 22 million stock options granted between 2000 and 2005 had incorrect measurement dates, and (2)
 23 \$25.5 million of additional stock compensation expense was required on 10.3 million stock options
 24 because the exercise prices were below the closing price of UTSI's stock on the date of the grant,
 25 including \$6.1 million of additional compensation expenses on 2 million options granted to UTSI
 26 officers and directors. The number and percentage of backdated options, the understatement of
 27 annual stock compensation expenses by more than 300% and the number of years covered by the
 28

1 restatement raise a strong inference each of the Individual Defendants knew UTSI was not reporting
 2 stock compensation expenses in accordance with APB 25.

3 **113. SEC lawsuit and C&D Order establish UTSI failed to establish sufficient**
 4 **controls:** In the lawsuit filed by the SEC against UTSI, Lu and Sophie and the SEC C&D Order, the
 5 SEC found that UTSI failed to establish and implement adequate internal controls for the granting of
 6 employee stock options by, among other things, “fail[ing] to maintain necessary documentation
 7 showing when the grants were actually authorized by the Compensation Committee.”

8 **114. Defendants Lu, Wu and Toy approved the stock option plans:** Each of the
 9 Individual Defendants knew the exercise price of any stock option could not be less than the market
 10 price of the stock on the date of the grant. Defendants Lu, Wu and Toy knew because as members of
 11 the Board, they approved the two plans that governed the granting of stock options – the 1997 Stock
 12 Plan (“1997 Plan”) and the 2001 Director Option Plan (“2001 Plan”) – that required the exercise
 13 price of any option grant to be no less than 100% of the fair market value on the date of the grant.
 14 *See* 1997 Plan, ¶8(a)(i)(B); 2001 Plan, ¶4. Defendants Lu, Sophie, Wu and Toy each received stock
 15 options, and the plans required recipients to enter into a written or electronic agreement with the
 16 Company which included the terms and conditions of the grant, and which expressly stated in
 17 paragraph 1 that the exercise price of grants were subject to the terms of the plan. *See* 1997 Plan,
 18 ¶2(r) and Stock Option Agreement attached; 2001 Plan, ¶13 and Director Option Agreement
 19 attached. In addition, each of the Individual Defendants knew because it was publicly represented in
 20 UTSI’s Proxy Statement (a group-published document filed with the SEC on 4/2/03) that the
 21 “exercise price of options is the market price on the date of grant, ensuring that the option will
 22 acquire value only to the extent that the price of the Company’s common stock increases relative to
 23 the market price at the date of grant.”

24 **115. Defendants Lu, Wu and Toy approved the grants:** Each of the Individual
 25 Defendants also knew they were receiving options with exercise prices that were less than the market
 26 price of the stock on the date of the grant. Defendants Lu, Wu and Toy knew because they were
 27 members of the Board that approved the backdated grants. The plan documents made the Board or a
 28 Committee of the Board responsible for administering the plans, including the granting of any

options. *See* 1997 Plan, ¶4; 2001 Plan, ¶4. According to the 4/2/03 Proxy Statement, the plans were administered by the Company's compensation committee, consisting of director Larry D. Horner and defendant Toy. However, the full Board had to approve the backdated options. According to the 4/2/03 Proxy Statement, the compensation committee was "responsible for reviewing and recommending for approval by the Board of Directors the Company's compensation practices, including executive salary levels and variable compensation programs, both cash-based and equity-based." It was also reported in the Proxy Statement that defendant Lu was directly responsible for recommending to the compensation committee the stock options to be granted to the Company's executive officers.

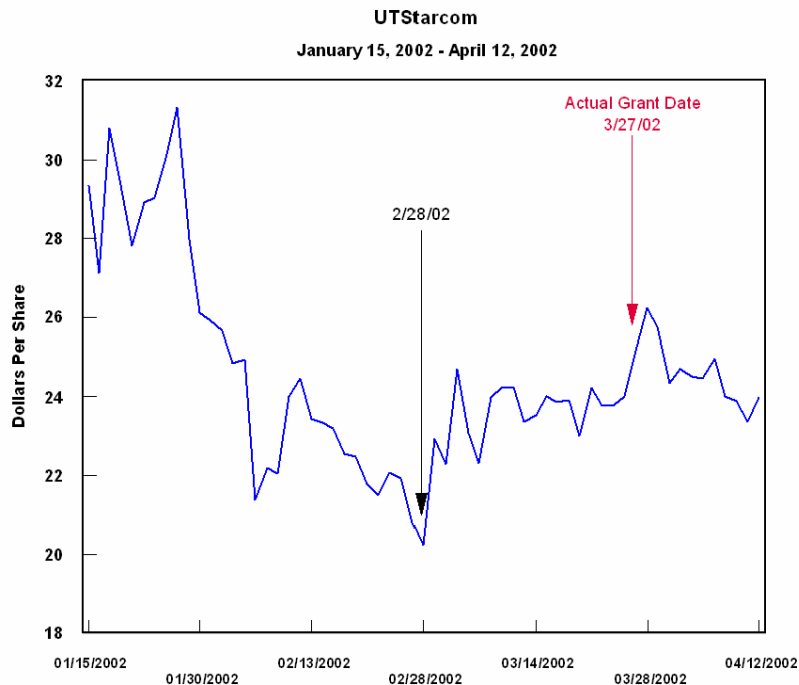
116. **Defendants Lu, Wu, Toy and Sophie receive backdated grants:** Defendants Lu, Sophie, Wu, Toy and other UTSI executives received options with exercise prices less than the market price of the stock on the date of the grant. The Company has admitted \$6.1 million of additional compensation expenses were recorded on 2 million options granted to UTSI officers and directors, and on 1/4/07, the Company identified two of the option grants included in that total. On 1/4/07, UTSI filed a Form 8-K with the SEC, in which it was disclosed that: (1) the stock option grants purportedly made on 2/28/02 with an exercise price of \$20.25 were actually made on 3/27/02 when the market price of the stock was \$25.25 and (2) the stock option grants purportedly made on 7/25/02 with an exercise price of \$15.72 were actually made on 7/17/02 when the market price of the stock was \$20.82. The 2/28/02 grant date was picked with the benefit of hindsight, and concealed a \$3.35 million financial benefit to Lu, Sophie, Wu and other UTSI executives:

Date	Executive	No. of Options Granted	2/28/02 Backdated Exercise Price	3/27/02 Actual Exercise Price	Concealed Benefit to Executive and Unrecorded Expense to UTSI
2/28/02	Lu	150,000	\$20.25	\$25.25	\$750,000
2/28/02	Sophie	100,000	\$20.25	\$25.25	\$500,000
2/28/02	Wu	100,000	\$20.25	\$25.25	\$500,000
2/28/02	Kwock	60,000	\$20.25	\$25.25	\$300,000
2/28/02	Chou	100,000	\$20.25	\$25.25	\$500,000
2/28/02	Soloway	80,000	\$20.25	\$25.25	\$400,000
2/28/02	Huang	80,000	\$20.25	\$25.25	\$400,000
Total		670,000	\$20.25	\$25.25	\$3,350,000

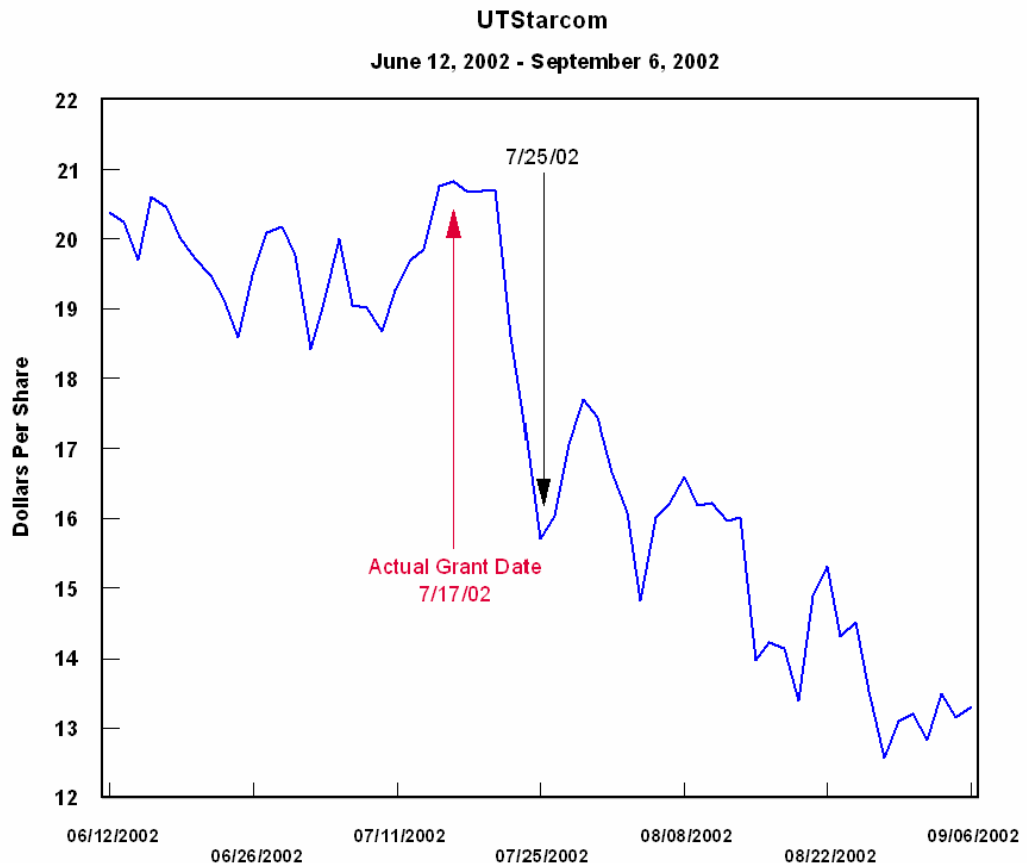
117. The 7/25/02 grant date was picked with the benefit of hindsight, and concealed a \$1.68 million financial benefit to Lu, Sophie, Wu and other UTSI executives:

Date	Executive	No. of Options Granted	7/25/02 Forward-Dated Exercise Price	7/17/02 Actual Exercise Price	Concealed Benefit to Executive and Unrecorded Expense to UTSI
7/25/02	Lu	75,000	\$15.72	\$20.82	\$382,500
7/25/02	Sophie	50,000	\$15.72	\$20.82	\$255,000
7/25/02	Wu	50,000	\$15.72	\$20.82	\$255,000
7/25/02	Kwock	25,000	\$15.72	\$20.82	\$127,500
7/25/02	Chou	50,000	\$15.72	\$20.82	\$255,000
7/25/02	Soloway	40,000	\$15.72	\$20.82	\$204,000
7/25/02	Huang	40,000	\$15.72	\$20.82	\$204,000
Total		330,000	\$15.72	\$20.82	\$1,683,000

118. **Price of UTSI stock before and after the grants: the 2/28/02 Backdated Stock Option Grant:** The price of the Company's stock before and after the date of the backdated options strongly infers Lu, Sophie, Wu and Toy knew that the Company was granting options with exercise prices less than the price of the stock on the date of the grant, and that the Company was not accounting for these in the money options in accordance with APB 25. As shown in the following chart, the 2/28/02 grant date price of \$20.25 was the lowest closing price of the stock in 2/02, and was immediately after a sharp decline in UTSI's stock price and immediately before a sharp spike in the price:



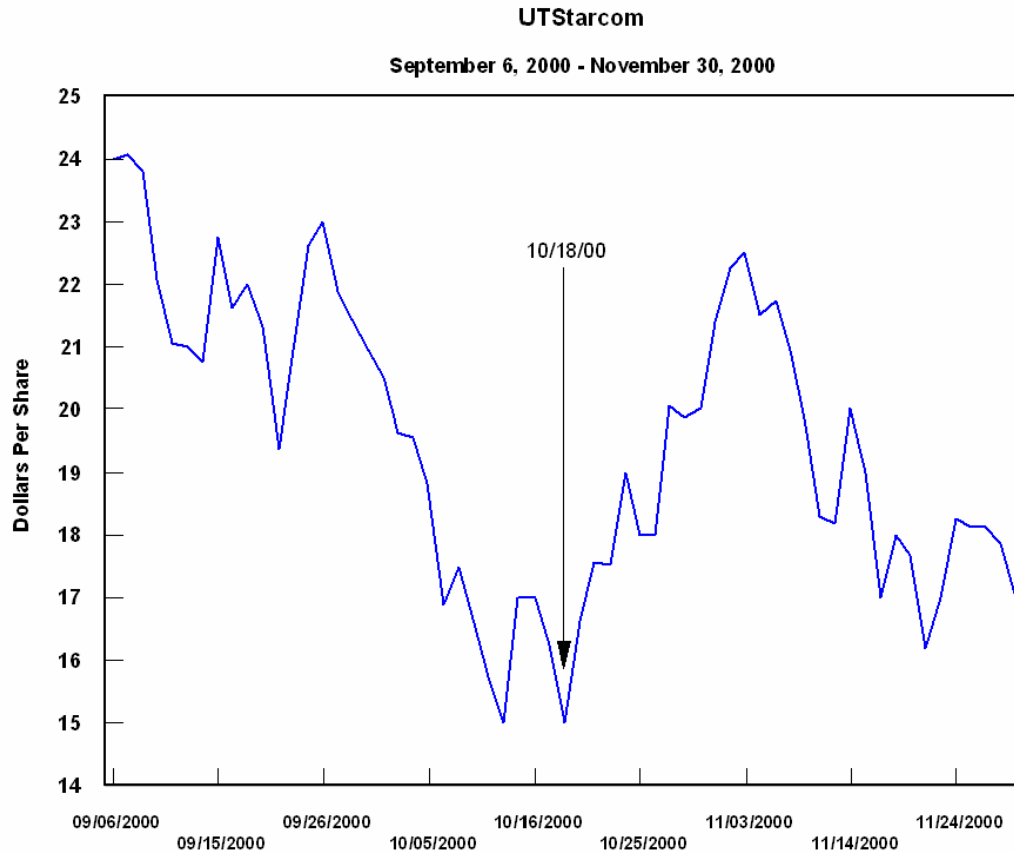
119. **The 7/25/02 Forward-Dated Stock Option Grant:** The 7/25/02 grant date price of \$15.72 was the lowest closing price of the stock in 7/02, while the actual 7/17/02 grant date was the date of UTSI's highest closing price in 7/02. The 7/25/02 grant date was also immediately after a sharp decline in UTSI's stock price:



120. Although UTSI has only acknowledged the options purportedly granted on 2/28/02 and 7/25/02 were actually granted on other dates, the following facts raise a strong inference the options granted on 10/18/00, 12/21/00 and 9/21/01 were granted on other dates when the Company's stock price was higher.

121. **10/18/00 Stock Option Grant:** A total of 380,000 options were purportedly granted on 10/18/00 to Lu, Sophie, Wu, Toy, Shao-Ning J. Chou ("Chou"), Gerald S. Soloway ("Soloway") and Huang with an exercise price of \$15 per share. As shown in the following chart, the stock grant came immediately after a sharp decline in UTSI's stock price and immediately before a sharp spike in the Company's stock price. The price of the stock 20 trading days before the grant was \$21.31 per

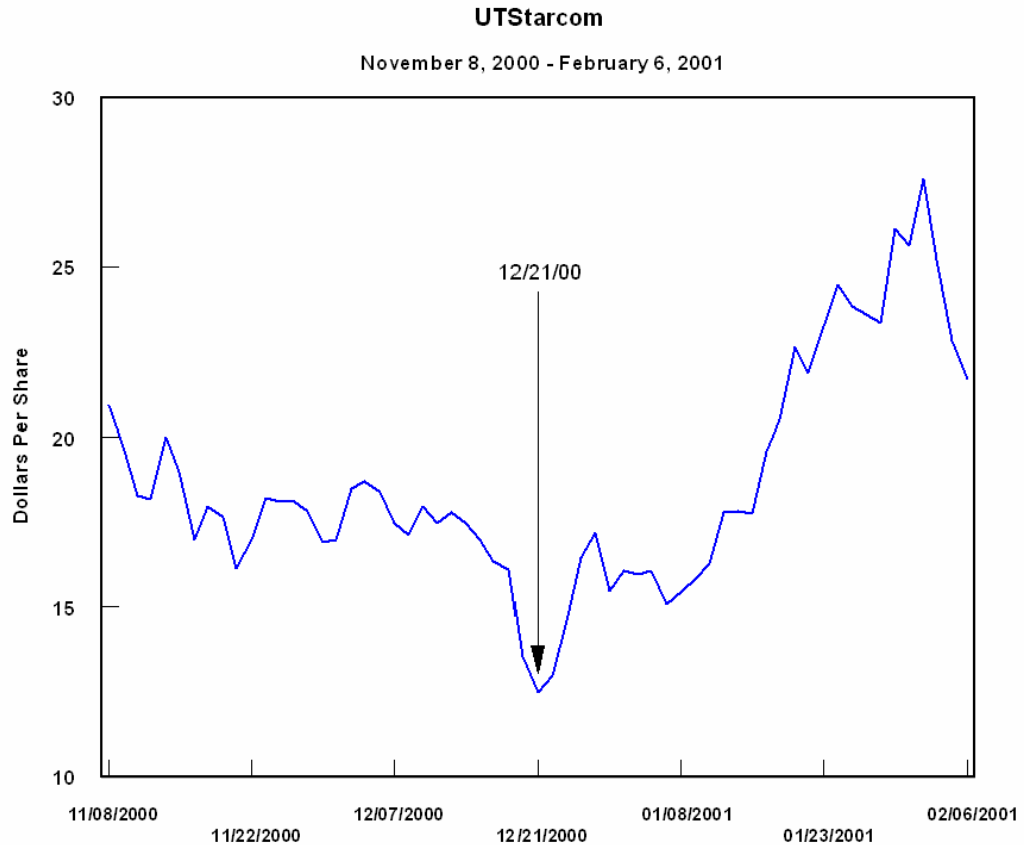
share, while the price of the stock 20 trading days after the grant was \$19 per share. Just 12 days after the purported grant, the stock price soared to \$22.50 per share, a 50% increase. Moreover, the purported exercise price was the lowest closing price in 10/00 when the stock traded between \$15 and \$20.50 per share. The exercise price was also the fifth lowest closing price for the entire year. Based on the \$19 per share price 20 trading days after the purported 10/18/00 grant date picked with the benefit of hindsight, the backdating of the option grant concealed a \$1.5 million financial benefit, and caused UTSI to understate compensation expense and overstate net income and EPS in violation of GAAP (APB 25) and the Company's publicly reported accounting policy:



Date	Executive	No. of Options Granted	Backdated Exercise Price	Stock Price 20 Trading Days After Grant	Concealed Benefit to Executive and Expense to UTSI
10/18/00	Lu	100,000	\$15.00	\$19.00	\$400,000
10/18/00	Sophie	50,000	\$15.00	\$19.00	\$200,000
10/18/00	Wu	55,000	\$15.00	\$19.00	\$220,000
10/18/00	Toy	10,000	\$15.00	\$19.00	\$40,000
10/18/00	Chou	60,000	\$15.00	\$19.00	\$240,000
10/18/00	Soloway	55,000	\$15.00	\$19.00	\$220,000

10/18/00	Huang	50,000	\$15.00	\$19.00	\$200,000
Total		380,000	\$15.00	\$19.00	\$1,520,000

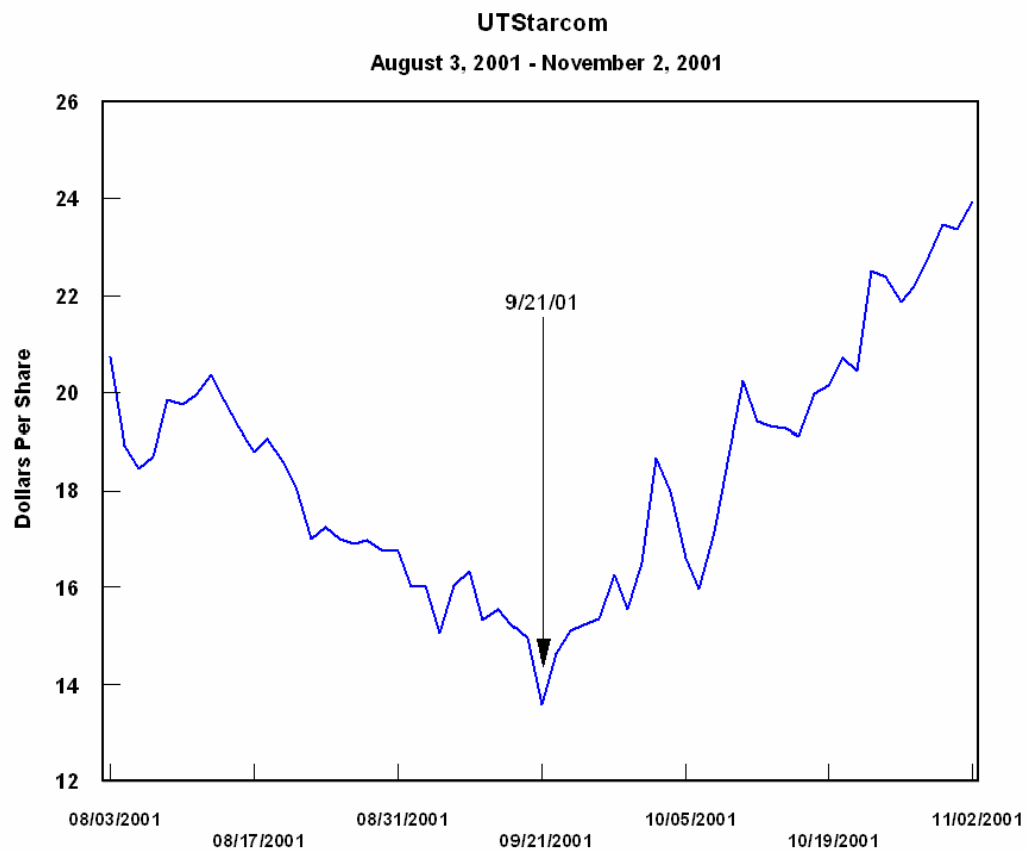
122. **12/21/00 Stock Option Grant:** A total of 352,500 options were purportedly granted on 12/21/00 to Lu, Sophie, Wu, Toy, Chou, Soloway and Huang with a purported exercise price of \$12.50 per share, which was *the lowest closing price of the year* and \$17.29 per share less than the average closing price for the year. As shown in the following chart, this stock grant came immediately after a sharp decline in UTSI's stock and immediately before a sharp spike in the Company's stock. The price of the stock 20 trading days before the grant was \$17 per share, while the price of the stock 20 trading days after the grant was \$23.25 per share. Moreover, the exercise price was the lowest closing price in 12/00 when the stock traded between \$12.50 and \$18.75 per share with an average price of \$16.53 per share. Based on the \$23.25 per share price 20 trading days after the purported 12/21/00 grant date picked with the benefit of hindsight, the backdating of the option grant concealed a \$3.8 million financial benefit, and caused UTSI to understate compensation expense and overstate net income and EPS in violation of GAAP (APB 25) and the Company's publicly reported accounting policy:



Date	Executive	No. of Options Granted	Backdated Exercise Price	Stock Price 20 Trading Days After Grant	Concealed Benefit to Executive and Expense to UTSI
12/21/00	Lu	100,000	\$12.50	\$23.25	\$1,075,000
12/21/00	Sophie	50,000	\$12.50	\$23.25	\$537,500
12/21/00	Wu	55,000	\$12.50	\$23.25	\$591,250
12/21/00	Toy	7,500	\$12.50	\$23.25	\$80,625
12/21/00	Chou	50,000	\$12.50	\$23.25	\$537,500
12/21/00	Soloway	45,000	\$12.50	\$23.25	\$483,750
12/21/00	Huang	45,000	\$12.50	\$23.25	\$483,750
Total		352,500	\$12.50	\$23.25	\$3,789,375

123. **9/21/01 Stock Option Grant:** During FY01, the public trading price of UTSI common stock ranged from a price of \$12.56 to \$30.43 per share, with an average closing price of \$21 per share. Howard Kwock (“Kwock”) was purportedly granted 50,000 options on 9/21/01 at an exercise price of \$13.61 per share, which was *the lowest closing price during the second half of the year* and \$7.39 per share less than the average closing price for the year. As shown in the following chart, this stock grant came immediately after a sharp decline in UTSI’s stock and immediately

before a sharp spike in the Company's stock. The price of the stock 20 trading days before the grant was \$18.80 per share, while the price of the stock 20 trading days after the grant was \$20.15 per share. Based on the \$20.15 per share price 20 trading days after the purported 9/21/01 grant date picked with the benefit of hindsight, the backdating of the option grant concealed a \$1 million financial benefit to Kwock and caused UTSI to understate compensation expense and overstate net income and EPS in violation of GAAP (APB 25) and the Company's publicly reported accounting policy:



Date	Executive	No. of Options Granted	Backdated Exercise Price	Stock Price 20 Trading Days After Grant	Concealed Benefit to Kwock and Expense to UTSI
9/21/01	Kwock	50,000	\$13.61	\$20.15	\$1,007,500

124. **SEC filing requirements provide opportunity to backdate:** The admitted grant date manipulations were possible because none of the Individual Defendants or other UTSI

executives disclosed the stock option grants until they filed a Form 5 in 2/01, 2/02 and 2/03, months after they had received the actual grants. Lu, Sophie, Wu, Huang, Soloway, Chou, and Toy each filed a Form 5 on 2/13/01 with the SEC, in which they represented they received options to acquire shares of UTSI stock on 10/18/00 at an exercise price of \$15, and on 12/21/00, at an exercise price of \$12.50. On 2/13/02, Kwock filed a Form 5 with the SEC, in which he represented he received options to purchase 50,000 shares on 9/21/01 at an exercise price of \$13.61. On 2/13/03, Lu, Sophie, Wu, Huang, Soloway, Chou and Kwock each filed a Form 5 with the SEC, in which each represented he had received options to acquire shares of UTSI stock on 2/28/02 at an exercise price of \$20.25, and on 7/25/02, at an exercise price of \$15.72. The Company admitted on 1/4/07 that these options were granted on different dates when the price of UTSI stock was higher. These false Form 5 disclosures constituted violations of federal criminal and civil laws (18 U.S.C. §1001 and 15 U.S.C. §78ff(a)). By delaying the disclosure of the option grants until filing the Forms 5 in 2/01, 2/02 and 2/03, Lu, Sophie, Wu, Toy and the other UTSI executives were able to cherry-pick the best date in which to grant the Company's executives options.

4. Facts Raising a Strong Inference Lu, Sophie, Toy and Wu Knew UTSI Failed to Disclose and Properly Account for Related-Party Transactions

125. Lu, Sophie, Wu and Toy knew or were deliberately reckless in not knowing that UTSI failed to record a \$7.5 million impairment charge in 2003 by failing to consolidate the results of MDC. According to the SEC C&D order and the 2003 Form 10-K/A filed on 4/13/05, UTSI entered into a complex transaction in 2003 involving MDC and another customer in China, whereby MDC took ownership of UTSI inventory that had decreased in value by \$7.5 million, but failed to record the impairment expense because UTSI failed properly to treat MDC as a consolidated entity. GAAP, specifically Financial Accounting Standards Board ("FASB") Interpretation No. 46 ("FIN 46"), required the consolidation of MDC's results with UTSI's results because (1) UTSI had a controlling interest or business or contractual relationship with MDC, (2) MDC was unable to finance its own operations without UTSI's support, and (3) MDC's other investors did not have exposure to the significant risks and rewards of ownership.

1 126. According to the SEC C&D Order, Lu, Sophie and Toy had been on notice of
2 concerns raised by the Company's auditors about UTSI's failure to adequately disclose related-party
3 transactions entered into by UTSI as early as 3/03 when they personally received a Management
4 Recommendation letter from PWC, detailing internal control weaknesses identified during the 2002
5 audit. Moreover, Lu and Sophie received another Management Recommendation letter from PWC
6 in 4/04, detailing internal control weaknesses identified during the 2003 audit. In that letter, the
7 auditors expressed concerns with many complex related-party transactions entered into by UTSI, and
8 informed UTSI that it did not adequately disclose significant transactions involving joint venture
9 arrangements between UTSI and its customers. In its written response, UTSI said it had
10 strengthened controls and implemented monitoring procedures to identify significant joint venture
11 transactions. But UTSI failed to consolidate the operations of MDC and record the \$7.5 million
12 impairment charge in the 2003 Form 10-K filed on 3/9/04.

13 127. The SEC C&D Order and disclosures in UTSI's 2003 Form 10-K/A filed on 4/13/05
14 also show that Lu, Sophie, Toy and Wu knew that MDC was a related party and that UTSI was
15 required to treat MDC as a consolidated entity. It was reported in the SEC C&D Order or the 2003
16 Form 10-K/A that (1) MDC was formed in 2001 to provide value-added services to UTSI,⁶ (2) Wu's
17 father founded MDC, (3) numerous officers and other employees of UTSI-China invested in MDC
18 and acquired a 67% ownership interest, (4) some UTSI employees held management positions at
19 MDC, (5) one UTSI-China executive held an alternate Board of Director position at MDC, (6)
20 certain UTSI-China employees worked for MDC while their salaries were paid by UTSI-China, (7)
21 UTSI employees participated in the 2001 formation and initial capitalization of Beijing MDC
22 Telecommunications Company Ltd. ("Beijing MDC"), an affiliate of MDC, and (8) UTSI received a
23 warrant in 12/02 to acquire 16% of MDC for \$800,000, which UTSI exercised on 12/31/04.

24
25
26 ⁶ According to http://www.sbaif.com/investmentportfolio_country-china.htm, UTSI and MDC
27 formed a strategic partnership to provide MDC's services to fixed line and mobile operators, and
28 UTSI registered MDC's website.

128. Lu, Sophie, Toy and Wu knew GAAP required UTSI to treat MDC as a consolidated entity because they each signed UTSI's 2003 Form 10-K filed on 3/9/04, in which it was reported that (1) FIN 46 was issued by the FASB in 1/03, (2) FIN 46 applied to UTSI if it had a controlling interest or business or contractual relationship with a variable interest entity ("VIE"), (3) FIN 46 required consolidation if the VIE was unable to finance its own operations without investor support, or where other investors do not have exposure to the significant risks and rewards of ownership, and (4) the Company had adopted FIN 46 for the quarter ending 12/31/03.

5. Facts Raising a Strong Inference Lu, Sophie, Wu and Toy Knew There Were Significant Internal Control Weaknesses Related to Goodwill

129. The Company's admission that there were significant internal control weaknesses that prevented UTSI from determining whether goodwill was impaired, a \$323 million impairment charge recorded by the Company in 3Q05 to write off 100% of goodwill and the reasons provided for the impairment charge raise a strong inference each of the Individual Defendants was at least deliberately reckless in representing that the Company's financial results in 4Q04, 1Q05 and 2Q05 were fairly presented in all material respects, and that the Company's disclosure controls and procedures were adequate and effective.

130. UTSI reported \$180.6 million of goodwill in 4Q04 and \$196 million of goodwill in 1Q05 and 2Q05. On 4/15/05, however, it was *reported in UTSI's 2004 Form 10-K that the Company's processes and procedures for the assessment of impairment were not sufficiently detailed to identify instances of impairment required under GAAP* (Statement of financial Accounting Standards Nos. 142 and 144). On 10/6/05, UTSI reported that goodwill was being evaluated for impairment because "circumstances may have changed sufficiently to indicate the fair value of some or all of UTSI's operating segments may be below book value." Then, on 11/3/05, UTSI wrote off all of the Company's goodwill and \$14.2 million of long-lived assets – recording a \$219 million impairment charge and a related \$103.6 million tax charge (goodwill write-offs of \$89.3 million related to the handset segment, \$55.7 million related to the wireless segment, \$24.7 million related to the PCD segment and \$23.2 million related to the broadband segment).

131. The explanations for the impairment charge strongly infer that each of the Individual Defendants knew or was deliberately reckless in not knowing the impairment charge should have been recorded no later than 4Q04. In UTSI's 3Q05 Form 10-Q, it was reported that the goodwill impairment charge was due to significant adverse changes in the business outlook, including: (1) a reduction in the rate of growth of PAS subscribers in 3Q05; (2) a delay in the expected granting of 3G (third generation) licenses in China and Japan; (3) challenges with broadband product quality; (4) a narrowing of UTSI's strategic focus; and (5) greater-than-expected revenue and margin declines due to continued pricing pressures. PAS subscriber growth rates – which Sophie stated during the Company's 10/23/03 conference call was a key metric because it ultimately drove both handset and infrastructure spending – were declining since 4Q03:

	4Q02	1Q03	2Q03	3Q03	4Q03	1Q04	2Q04	3Q04	4Q04	1Q05	2Q05	3Q05	4Q05
China PAS Subscribers	12	15	20	28	35	45	54	60	67	73	78.5	83.8	87
Growth Rate	20%	25%	33%	40%	25%	28%	17%	11%	12%	9%	7.5%	6.7%	4%

132. In addition, PAS equipment orders had been declining substantially throughout 2003 and 2004, which caused a subsequent reduction in PAS equipment revenues in 2004 and 2005, and PAS handset revenues had been declining since 1Q04:

	1Q03	2Q03	3Q03	4Q03	1Q04	2Q04	3Q04	4Q04	1Q05	2Q05	3Q05	4Q05
PAS Equipment Contracts	\$453	\$245	\$200	\$105	\$377 (\$177 after 1/13/04)	\$233	\$0	\$67	\$160	\$70	\$167	\$42
PAS Equipment Revenues	\$125	\$140	\$192	\$263	\$337	\$428	\$426	\$206	\$110	\$148	\$113	\$128
PAS Handset Revenues	\$140	\$187	\$334	\$308	\$236	\$194	\$160	\$158	\$128	\$148	\$106	\$93

133. Indeed, on 9/20/04, the Company reported that revenues from China PAS sales in 2005 were expected to be 20%-25% less than the \$2.1 billion expected to be reported in 2004, and on 5/5/05, the Company reported China PAS sales in 2005 would be 40%-50% less than 2004. These facts strongly infer the \$89.3 million charge related to the handset segment and the \$55.7 million charge related to the wireless segment should have been recorded no later than 4Q04.

134. As detailed herein, information provided by former UTSI employees, the Company's lawsuit against Passave, Inc. ("Passave"), the terms of the Japan Telecom contract, the failure to report broadband revenues in line with guidance in 2004, the substantial decline in broadband gross margins from 53% in 2003 to 20% in 2004, and other facts establish there were numerous problems with the Company's broadband products throughout 2004 that raise a strong inference the \$23.2 million impairment charge related to the broadband segment should have been recorded no later than 4Q04.

6. Suspicious Insider Selling Strengthens the Inference Lu, Sophie, Wu and Toy Knew About the Significant Internal Control Weaknesses that Caused UTSI to Report Materially False and Misleading Financial Results

135. Lu, Sophie, Wu, Toy and the other UTSI executives sold 1,620,103 shares of their UTSI stock in the first 11 months of the Class Period for \$58 million. The sales were particularly suspicious in both timing and amount. As shown in the following charts, the Individual Defendants and the other UTSI executives sold in unison when they knew that (1) there were significant internal control weaknesses that caused UTSI to overstate revenues and earnings, (2) China Telecom and China Netcom were substantially reducing orders for PAS systems, (3) there were pervasive and systemic operational problems that were delaying delivery of products and causing the Company to deliver defective products. Moreover, the sales occurred as UTSI's stock price increased 150% from 2/21/03 to 8/21/03 compared to just a 34% increase in the PPG:

Hong Liang Lu, CEO, President, Director

<u>Date</u>	<u>Shares</u>	<u>Price</u>	<u>Proceeds</u>
3/25/03	45,000	\$19.90	\$895,500
7/22/03	10,000	\$42.00	\$420,000
8/1/03	10,000	\$42.03	\$420,300
8/21/03	100,000	\$45.24	\$4,524,300
9/2/03	10,000	\$44.00	\$439,970
10/28/03	10,000	\$32.62	\$326,240
11/3/03	10,000	\$31.64	\$316,370
12/1/03	10,000	\$37.83	\$378,340
1/2/04	10,000	\$38.75	\$387,470
Total	215,000		\$8,108,490

Michael J. Sophie, CFO, VP

<u>Date</u>	<u>Shares</u>	<u>Price</u>	<u>Proceeds</u>
3/25/03	31,251	\$19.90	\$621,895
3/25/03	4,749	\$19.90	\$94,505
4/22/03	12,000	\$22.86	\$274,322
5/2/03	12,000	\$23.20	\$278,400
6/3/03	12,000	\$28.07	\$336,852
6/16/03	45,000	\$33.21	\$1,494,630
7/1/03	12,000	\$34.28	\$411,348
8/1/03	12,000	\$42.06	\$504,708
9/2/03	12,000	\$43.77	\$525,240
10/29/03	21,839	\$32.25	\$704,308
11/3/03	21,839	\$31.64	\$690,920
12/1/03	21,805	\$37.83	\$824,970
1/2/04	9,839	\$38.75	\$381,232
Total	228,322		\$7,143,340

Ying Wu, EVP, Director

<u>Date</u>	<u>Shares</u>	<u>Price</u>	<u>Proceeds</u>
7/22/03	85,000	\$42.00	\$3,570,000
8/1/03	85,000	\$42.06	\$3,575,440
9/2/03	35,000	\$43.18	\$1,511,440
9/2/03	50,000	\$43.18	\$2,159,200
10/28/03	85,000	\$32.62	\$2,773,040
11/3/03	85,000	\$31.64	\$2,689,145
12/1/03	85,000	\$37.83	\$3,215,890
1/5/04	85,000	\$39.86	\$3,387,930
Total	595,000		\$22,882,085

Thomas J. Toy, Director

<u>Date</u>	<u>Shares</u>	<u>Price</u>	<u>Proceeds</u>
7/22/03	10,000	\$42.00	\$420,000
8/1/03	10,000	\$42.06	\$420,640
9/2/03	10,000	\$43.61	\$436,090
11/5/03	20,000	\$34.26	\$685,220
12/1/03	10,000	\$37.83	\$378,340
1/2/04	10,000	\$38.75	\$387,470
Total	70,000		\$2,727,760

Shao-Ning J. Chou, EVP

<u>Date</u>	<u>Shares</u>	<u>Price</u>	<u>Proceeds</u>
4/21/03	10,000	\$22.73	\$227,300
4/21/03	17,500	\$22.76	\$398,300
4/21/03	8,500	\$22.70	\$192,950
4/21/03	14,000	\$22.74	\$318,360
5/6/03	6,687	\$23.70	\$158,482
5/6/03	13,313	\$23.51	\$312,989
5/12/03	10,000	\$23.55	\$235,500
5/12/03	20,000	\$23.60	\$472,000

<u>Date</u>	<u>Shares</u>	<u>Price</u>	<u>Proceeds</u>
5/20/03	10,000	\$26.50	\$265,000
5/29/03	10,000	\$29.40	\$294,000
6/17/03	10,000	\$34.50	\$345,000
6/17/03	10,000	\$33.85	\$338,540
6/17/03	10,000	\$34.75	\$347,500
6/24/03	20,000	\$33.01	\$660,200
7/8/03	10,000	\$39.83	\$398,290
7/8/03	10,000	\$39.62	\$396,150
7/14/03	10,000	\$40.50	\$405,000
7/21/03	20,000	\$42.54	\$850,780
Total	220,000		\$6,616,341

Gerald S. Soloway, Senior VP

<u>Date</u>	<u>Shares</u>	<u>Price</u>	<u>Proceeds</u>
3/25/03	3,000	\$19.90	\$59,700
5/14/03	5,000	\$26.052	\$130,250
5/14/03	10,000	\$26.00	\$260,000
5/15/03	5,000	\$27.15	\$135,750
6/6/03	5,625	\$29.87	\$167,996
6/6/03	25,000	\$30.00	\$750,000
7/8/03	20,000	\$40.00	\$800,000
7/8/03	11,902	\$39.70	\$472,509
8/7/03	6,698	\$39.65	\$265,576
8/19/03	30,054	\$43.83	\$1,317,117
9/8/03	1,936	\$40.64	\$78,681
10/28/03	2,873	\$32.62	\$93,729
11/7/03	8,947	\$34.33	\$307,106
11/13/03	4,125	\$32.45	\$133,856
11/14/03	4,875	\$32.45	\$158,194
12/5/03	4,374	\$36.55	\$159,870
1/5/04	40,000	\$40.09	\$1,603,800
1/6/04	10,000	\$41.00	\$410,000
1/7/04	10,000	\$41.52	\$415,180
1/8/04	14,372	\$41.84	\$601,281
Total	223,781		\$8,320,594

Bill Huang, CTO, Senior VP

<u>Date</u>	<u>Shares</u>	<u>Price</u>	<u>Proceeds</u>
4/21/03	10,000	\$22.55	\$225,500
5/22/03	10,000	\$27.30	\$273,000
6/19/03	4,000	\$34.00	\$136,000
7/16/03	3,539	\$41.61	\$147,261
8/13/03	4,461	\$41.60	\$185,560
11/19/03	5,000	\$34.75	\$173,750
11/20/03	7,000	\$36.01	\$252,049
12/2/03	4,000	\$37.87	\$151,480
Total	48,000		\$1,544,600

Howard Kwock, VP of Engineering

<u>Date</u>	<u>Shares</u>	<u>Price</u>	<u>Proceeds</u>
5/14/03	10,000	\$25.25	\$252,500
8/1/03	2,000	\$42.36	\$84,720
9/2/03	2,000	\$43.84	\$87,680
1/5/04	6,000	\$40.25	\$241,500
Total	20,000		\$666,400

136. Many of the Individual Defendants and the other UTSI executives sold just about all of their stock and the sales comprised a substantial amount of their holdings and vested options:

<u>Executive</u>	<u>Shares Sold</u>	<u>Stock Holdings</u>	<u>% of Sales to Stock Holdings</u>	<u>Vested Options as of 2/23/04</u>	<u>% Sales to Stock Holdings and Vested Options</u>
Lu	215,000	2,697,961	8%	865,209	6%
Sophie	228,322	232,324	98%	91,890	70%
Wu	595,000	1,968,087	30%	402,028	25%
Toy	70,000	70,000	100%	79,966	47%
Kwock	20,000	20,000	100%	N/R	unknown
Chou	220,000	313,946	70%	301,253	36%
Soloway	223,781	224,372	99%	150,629	60%
Huang	48,000	687,934	7%	158,753	6%
Total	1,620,000	6,214,624	26%	2,049,728	20%

137. The sales in the first 11 months of the Class Period were more than three times the 489,637 shares sold during the 14 months before the Class Period:

<u>Executive</u>	<u>Shares Sold from 1/1/02 - 2/20/03</u>	<u>Shares Sold from 2/21/03 - 1/8/04</u>	<u>Percentage Increase in Shares Sold from 2/21/03 - 1/8/04</u>
Lu	135,500	215,000	59%
Sophie	205,000	228,322	11%
Wu	0	595,000	N/A
Toy	0	70,000	N/A
Kwock	0	20,000	N/A
Chou	50,000	220,000	340%
Soloway	75,137	223,781	200%
Huang	24,000	48,000	100%
Total	489,637	1,620,000	230%

138. As shown in the following charts, many of the sales by Sophie, Toy, Kwock, Chou and Soloway involved backdated options. In fact, every single one of Kwock's Class Period sales related to the exercise of backdated stock options. Combined, the five executives exercised 250,421 backdated options and received an additional \$1.6 million in insider trading proceeds due solely to the manipulation of the exercise prices and the grant dates:

Michael J. Sophie

DATE	PURPORTED GRANT DATE	OPTIONS EXERCISED	EXERCISE COST	ACTUAL EXERCISE COST	ADDITIONAL CLASS PERIOD PROCEEDS
6/16/03	10/18/00	25,001	\$375,015	\$475,019	\$100,004
6/16/03	12/21/00	19,999	\$249,988	\$464,977	\$214,989
10/29/03	2/28/02	4,587	\$92,887	\$115,822	\$22,935
10/29/03	7/25/02	1,921	\$30,198	\$39,995	\$9,797
10/29/03	10/18/00	1,667	\$25,005	\$31,673	\$6,668
10/29/03	12/21/00	1,597	\$19,963	\$37,130	\$17,168
11/3/03	2/28/02	4,587	\$92,887	\$115,822	\$22,935
11/3/03	7/25/02	1,921	\$30,198	\$39,995	\$9,797
11/3/03	10/18/00	1,667	\$25,005	\$31,673	\$6,668
11/3/03	12/21/00	1,597	\$19,963	\$37,130	\$17,168
12/1/03	2/28/02	4,587	\$92,887	\$115,822	\$22,935
12/1/03	7/25/02	1,921	\$30,198	\$39,995	\$9,797
12/1/03	10/18/00	1,667	\$25,005	\$31,673	\$6,668
12/1/03	12/21/00	1,597	\$19,963	\$37,130	\$17,168
1/2/04	2/28/02	4,587	\$92,887	\$115,822	\$22,935
1/2/04	7/25/02	1,921	\$30,198	\$39,995	\$9,797
1/2/04	10/18/00	1,667	\$25,005	\$31,673	\$6,668
1/2/04	12/21/00	1,597	\$19,963	\$37,130	\$17,168
TOTAL		84,088	\$1,297,212	\$1,838,477	\$541,265

Thomas J. Toy

DATE	PURPORTED GRANT DATE	OPTIONS EXERCISED	EXERCISE COST	ACTUAL EXERCISE COST	ADDITIONAL CLASS PERIOD PROCEEDS
7/22/03	12/21/00	7,500	\$93,750	\$174,375	\$80,625
7/22/03	10/18/00	2,500	\$37,500	\$47,500	\$10,000
TOTAL		10,000	\$131,250	\$221,875	\$90,625

Shao-Ning J. Chou

DATE	PURPORTED GRANT DATE	OPTION EXERCISED	EXERCISE COST ⁷	ACTUAL EXERCISE COST ⁸	ADDITIONAL CLASS PERIOD PROCEEDS
4/21/03	12/21/00	1,687	\$21,088	\$39,223	\$18,135
5/6/03	12/21/00	10,813	\$135,163	\$251,402	\$116,240
5/6/03	10/18/00	2,500	\$37,500	\$47,500	\$10,000
TOTAL		15,000	\$193,750	\$338,125	\$144,375

⁷ Exercise cost is based upon the exercise price of the stock option grants on the purported exercise date.

⁸ Actual exercise cost is based upon the exercise price of the stock option grants either on the admitted actual exercise date or at the stock price 20-trading days following the purported grant date.

Howard Kwock

DATE	PURPORTED GRANT DATE	OPTIONS EXERCISED	EXERCISE COST	ACTUAL EXERCISE COST	ADDITIONAL CLASS PERIOD PROCEEDS
5/14/03	9/21/01	10,000	\$136,100	\$201,500	\$65,400
8/1/03	9/21/01	2,000	\$27,220	\$40,300	\$13,080
9/2/03	9/21/01	2,000	\$27,220	\$40,300	\$13,080
1/5/04	9/21/01	6,000	\$81,660	\$120,900	\$39,240
TOTAL		20,000	\$272,200	\$403,000	\$130,000

Gerald S. Soloway

DATE	PURPORTED GRANT DATE	OPTIONS EXERCISED	EXERCISE COST	ACTUAL EXERCISE COST	ADDITIONAL CLASS PERIOD PROCEEDS
8/19/03	7/25/02	10,000	\$157,200	\$208,200	\$51,000
8/19/03	10/18/00	351	\$5,265	\$6,669	\$1,404
9/8/03	12/21/00	938	\$11,725	\$21,809	\$10,084
10/28/03	12/21/00	1,875	\$23,438	\$43,594	\$20,156
11/7/03	10/18/00	3,437	\$51,555	\$65,303	\$13,748
11/7/03	7/25/02	2,501	\$39,316	\$52,071	\$12,755
12/5/03	10/18/00	1,146	\$17,190	\$21,774	\$4,584
12/5/03	12/21/00	937	\$11,713	\$21,785	\$10,073
12/5/03	7/25/02	833	\$13,095	\$17,343	\$4,248
1/5/04	2/28/02	36,667	\$742,507	\$925,842	\$183,335
1/8/04	10/18/00	1,145	\$17,175	\$21,755	\$4,580
1/8/04	12/21/00	937	\$11,713	\$21,785	\$10,073
1/8/04	7/25/02	833	\$13,095	\$17,343	\$4,248
TOTAL		121,333	\$1,955,304	\$2,674,847	\$719,542

139. **Effect on Stock Price:** The increases and decreases in the Company's stock price relative to the PPG and the NASDAQ establish that the false financial results and the Sarbanes-Oxley certifications issued during the Class Period caused the Company's stock price to trade at artificially inflated prices. Some of the artificial price inflation was removed from the stock price after partial disclosures by UTSI that revealed the Company's financial results were not fairly presented in all material respects and that the Company's disclosure controls and procedures were not adequate and effective. As a result, Class members who purchased UTSI stock during the Class Period suffered economic loss, *i.e.*, damages under the federal securities laws.

140. **Loss Causation/Date of Loss:** Class members suffered economic losses on the following dates:

- On 7/28/04, the Company's stock price declined 29.3% to \$17.85, compared to a 0.6% decline in both the PPG and the NASDAQ after UTSI revealed on 7/27/04 that there were problems with its disclosure controls and procedures related to revenue

1 recognition. UTSI reported that it did not recognize \$28.7 million of higher margin
2 international revenue because it took longer to deliver new products and receive final
acceptance.

- 3 • The Company's stock price declined 14% from \$17.95 on 8/10/04 to \$15.37 on
4 8/11/04, compared to a 0.5% decline in the PPG and a 1.5% decline in the NASDAQ
5 after UTSI announced that there would be a delay in the filing of the 2Q04 Form 10-
Q because the Audit Committee had not completed its review and analysis of the
6 sales transaction that caused the \$28.7 million revenue shortfall in 2Q04.
- 7 • On 9/20/04, the Company's stock price declined 10% to \$13.17, compared to a 1.5%
8 decline in the PPG and a 0.1% decline in the NASDAQ after UTSI announced that it
would not be able to recognize \$220 million of revenue it expected to recognize in
2004.
- 9 • On 1/7/05, the Company's stock price declined 20% from \$19.94, to \$15.97,
10 compared to a 0.8% increase in the PPG and a 0.1% decline in the NASDAQ after
11 UTSI announced on 1/6/05 that 4Q04 revenues would be \$135 million less than the
12 \$875-\$885 million previously represented on 10/26/04 because revenues from China
13 operations were being adversely impacted by the slowing Chinese economy, the
maturation of the China PAS market and delays in the execution of contracts and
receipt of final acceptances.
- 14 • On 3/31/05, the Company's stock price declined 7.5% from \$11.84 to \$10.95,
15 compared to a 1.2% increase in the PPG and a 0.3% decline in the NASDAQ after
16 UTSI announced that (1) there would be a delay in filing the 2003 restated financial
statements and the 2004 Form 10-K because more time was needed to finalize the
17 assessment of internal control over financial reporting and (2) additional deficiencies
had been identified.
- 18 • On 10/7/05, the Company's stock price declined 26% to \$5.64, compared to a 1.3%
19 increase in the PPG and a 0.3% increase in the NASDAQ after UTSI reported on
20 10/6/05 that 3Q05 results would be less than the guidance provided on 8/2/05
because UTSI had not completed all elements of a \$40 million contract. In addition,
21 the Company revealed that it might need to record an impairment charge to write off
some or all of goodwill, and that the Company had received a notice of formal
22 inquiry from the SEC into certain aspects of UTSI's financial disclosures during
prior reporting periods.
- 23 • On 2/9/06, the Company's stock price declined 3.2% from \$6.81 to \$6.59, compared
24 to a 1% decline in the PPG and a 0.5% decline in the NASDAQ after UTSI
announced that it had improperly recognized \$22 million of revenue between 2003
25 and 2005 on a contract with a customer in India, and that the Audit Committee had
initiated an investigation to determine if the Company's previously issued financial
26 statements needed to be adjusted.
- 27 • On 3/17/06, the Company's stock price declined 6.1% from \$6.24 to \$5.86,
28 compared to a 0.4% decline in the PPG and a 0.3% increase in the NASDAQ after

1 the Company reported on 3/16/06 that there would be a delay in the filing of the 2005
2 Form 10-K because the Audit Committee needed additional time to investigate the
3 \$22 million of improperly recognized revenue on the contract with a customer in
India and certain other transactions.

4 • On 4/13/06, the Company's stock price declined 4.2%, compared to a 0.1% decline
5 in the PPG and a 0.6% decline in the NASDAQ after UTSI issued a press release
announcing Sophie's resignation.

6 • On 9/22/06, the Company's stock price declined 4.7% from \$8.99 to \$8.57,
7 compared to no change in the PPG and a 0.8% decline in the NASDAQ after the
8 Center for Financial Research and Analysis ("CFRA") issued a report on 9/21/06, in
which it questioned whether the Company had any stock option backdating issues.

9 • On 11/8/06, the Company's stock price declined 8.4% from \$10.23 to \$9.37,
10 compared to a 1.3% increase in the PPG and a 0.4% increase in the NASDAQ after
11 UTSI reported on 11/7/06 that it had commenced a review of its historical equity
12 award grant practices under the direction of the Nominating and Corporate
Governance Committee with the assistance of independent legal counsel and
independent accounting consultants.

13 • On 1/5/07, the Company's stock price declined 3% from \$9.04 to \$8.77, compared to
14 a 1.7% decline in the PPG and a 0.8% decline in the NASDAQ after UTSI filed a
15 Form 8-K on 1/4/07 that disclosed (1) stock option grants purportedly made on
16 2/28/02 with an exercise price of \$20.25 were actually made on 3/27/02 when the
market price of the stock was \$25.25 and (2) stock option grants purportedly made
on 7/25/02 with an exercise price of \$15.72 were actually made on 7/17/02 when the
market price of the stock was \$20.82.

17 • On 2/2/07, the Company's stock price declined 1.1% from \$9 to \$8.90, compared to
18 a 0.3% decline in the PPG and a 0.3% increase in the NASDAQ after UTSI reported
19 on 2/1/07 that it would have to restate its financial statements because it failed to
account for stock option compensation expenses in accordance with APB 25.

20 • The Company's stock price declined 34.5% from \$4.73 on 7/23/07 to \$3.10 on
21 7/30/07, compared to a 3.8% decline in the PPG and a 4% decline in the NASDAQ
22 after UTSI reported on 7/24/07 that (1) it would restate its financial statements and
23 record an additional \$28 million of expenses because it failed to account for stock
option compensation expenses in accordance with APB 25 and (2) it was reviewing
24 historical sales contracts with some of its customers in China that could impact
revenue recognized in previously issued financial statements.

25 • The Company's stock price declined 8.1% from \$4.93 on 10/10/07 to \$4.53 on
26 10/12/07, compared to no change in the PPG and a 0.2% decline in the NASDAQ
27 after UTSI reported on 10/10/07 that the investigation of the China sales contracts
would require UTSI to restate and reduce revenues by \$270 million and net income
28 by \$124 million.

Period	4/16/03 Guidance	Originally Reported	4/13/05 Restatement	6/1/06 Restatement	10/10/07 Restatement
3Q03	34%	31.8%	31.8%	31.8%	N/R
4Q03	34%	31.0%	29.2%	29.1%	N/R
FY03	34%-35%	32.4%	31.8%	31.7%	31.6%

The failure to report gross margins in line with guidance establishes that the backlog did not provide tremendous visibility into future results in 2003.

145. **Scienter and Factual Basis for Scienter:** Lu and Sophie knew there was no reasonable basis for the gross margin guidance or the representations that the backlog provided tremendous visibility into the Company's future results because they knew (1) China Telecom and China Netcom were substantially reducing orders for PAS equipment, (2) gross margins on PAS equipment sales were declining due to the reduced demand and aggressive pricing, and (3) gross margins on PAS equipment sales and broadband equipment sales were being negatively impacted by the undisclosed operational problems that were delaying revenue recognition and increasing the costs of the backlogged sales. In addition, Lu and Sophie knew there were significant internal control weaknesses that precluded them from knowing if (1) UTSI was properly recognizing revenue on sales with side agreements supplementing or amending contract terms, (2) UTSI was properly accounting for related-party transactions and (3) UTSI was obtaining sales by bribing foreign government officials in violation of the FCPA.

146. **Lu and Sophie knew China Telecom and China Netcom were substantially reducing their orders for PAS equipment:** Lu and Sophie knew, as was reported in UTSI's 2002 Form 10-K, that China Telecom and China Netcom were UTSI's largest customers – indeed, the lifeblood of the Company – accounting for 84% or \$823 million of the Company's \$981.8 million of sales in 2002. The \$823 million included \$446 million of revenue from sales of PAS equipment, which generated 40% gross margins and \$377 million of revenue from sales of PAS handsets, which generated gross margins of 25%. Because China Telecom and China Netcom were also UTSI's largest customers in 2003, Lu and Sophie knew, as was reported in the 2002 Form 10-K, that declines in higher margin PAS equipment orders or declines in gross margins on existing orders would cause a material adverse effect on UTSI's financial results. Therefore, the Company

1 maintained a very close relationship with its two largest customers. During UTSI's 9/25/03
2 conference call, Sophie said, "Obviously, we're very close to both China Telecom and China
3 Netcom. We've deployed in over 800 cities. And so we're very much grounds based on what's
4 happening in those cities." In the 2002 Form 10-K, it was reported that UTSI "established a strong
5 local presence" with the two companies which "enable[d] UTSI to be responsive to them and the
6 specific needs of their subscribers."

7 147. Because China Telecom and China Netcom were UTSI's largest customers, UTSI
8 tracked their orders for PAS equipment. The Company also announced specific sales to China
9 Telecom, China Netcom and most of its other customers which are summarized in Exhibit 3. The
10 dollar amount of reported PAS equipment orders declined substantially from \$453 million in 1Q03
11 to \$245 million in 2Q03, to \$200 million in 3Q03 and to \$105 million in 4Q03, and gross margins on
12 PAS equipment sales declined from 40% in 2002 to 32% in 2003. The importance of China
13 Telecom and China Netcom to the Company's financial results, the admitted close relationship
14 between UTSI and its two largest customers, and the substantial decline in orders in 2003, raise a
15 strong inference Lu and Sophie knew that their plans to substantially reduce PAS equipment orders
16 in 2003 and that PAS equipment gross margins were declining.

17 148. **Witnesses confirm substantial decline in PAS demand in 2003:** An article in the
18 10/29/07 edition of *The Recorder* strengthens the inference Lu and Sophie knew that China Telecom
19 and China Netcom were substantially reducing orders and that the decline was well known
20 throughout the Company. In the article, a former employee involved in the preparation of UTSI's
21 public revenue numbers was asked about PAS demand in 2003, and was quoted as stating, "It looked
22 like everything was falling off a cliff in terms of shipments."

23 149. **Excess capacity contributes to decline in orders and prices:** Lu and Sophie also
24 knew orders were declining because there was excess capacity on existing PAS networks. Lu
25 acknowledged during the 4/27/04 conference call that the Company knew there was excess capacity
26 on existing PAS networks in 2003 with *less than 60% utilization* after UTSI deployed \$1.4 billion
27 of PAS systems in 2002 and 1H03. CW21 said that UTSI was building more PAS infrastructure
28 equipment than was needed in 2003 given the excess capacity.

1 150. **Aggressive pricing and higher costs reduce PAS equipment gross margins:**
2 Witness accounts and statements by Lu and Sophie during the Company's 4/27/04 and 7/27/04
3 conference calls establish they knew PAS equipment gross margins would decline in 2003 and 2004.
4 During the 4/27/04 conference call, Lu was asked why PAS equipment gross margins had declined
5 in 2003. He stated that UTSI always had a difficult time generating high gross margins on new PAS
6 equipment orders because of higher design and manufacturing costs. During the same conference
7 call, Lu and Sophie acknowledged they knew prices for PAS equipment were down in 2003 by
8 stating they were just starting to see stabilization on the prices for PAS equipment. In response to a
9 question from Wachovia Securities analyst Stephen Koffler during the 7/27/04 conference call,
10 Sophie also acknowledged that PAS gross margins were low in 2003 because UTSI had to offer
11 aggressive pricing to obtain orders. Lu and Sophie surely would have known about the aggressive
12 pricing on PAS equipment orders received in 2003 as well as the higher design and manufacturing
13 costs and their impact on gross margins in 2003 – given their positions at the Company and the
14 importance of China Telecom and China Netcom to UTSI's financial results.

15 151. **Demand for cellular technology contributes to reduced demand for lower quality**
16 **PAS equipment:** Lu and Sophie knew that the reduced demand for PAS equipment and handsets
17 was a result of PAS systems being low quality, limited mobility telecommunications systems that
18 were rapidly becoming obsolete and being replaced by cellular technology. UTSI's PAS – known as
19 “Little Smart” in China – is a wireless access system that provides fixed-line phone subscribers
20 limited and/or regional mobility (more than fixed line and less than cellular) at a lower price than a
21 cellular subscription. PAS was specifically designed to meet the growing needs of lower and middle
22 income subscribers that desired limited mobility and a lower price than cellular.

23 152. Little Smart provided “limited mobility service” compared to regular cell phones
24 because the Chinese government did not allow China Telecom and China Netcom to own or operate
25 cellular telecommunications systems. China Mobile and China Unicom were other government
26 controlled telecommunications companies that were permitted to own and operate cellular
27 telecommunications systems. UTSI's PAS system allowed China Telecom and China Netcom to
28 offer “mobile-like” services, but PAS subscribers could not roam beyond city limits because most

1 handsets did not have a SIM (subscriber identity module) card, and the spatial range of coverage for
2 each Little Smart base station was limited to a couple of hundred meters in radius as opposed to
3 ordinary cellular base stations that cover areas tens of kilometers away.

4 153. Little Smart's signal is less reliable and less clear – especially in moving vehicles –
5 compared to cellular (GSM and CDMA) systems. Little Smart services were limited compared to
6 cell phones as shown by the inability of Little Smart subscribers to send or receive SMS (short
7 message service) on their handsets until 2004. Little Smart handsets were inferior to regular cell
8 phones because they did not include many features like silent and vibration modes. Indeed, there
9 were numerous derogatory terms used by subscribers to refer to Little Smart, including “Weiwei ko”
10 (Hello-Hello call, because users are always saying hello-hello) and “Shikengtong” (toilet connection,
11 to indicate a very low standard).

12 154. Lu and Sophie knew competition from cellular service providers was also
13 contributing to the substantially reduced demand for PAS systems. The Chinese Ministry of
14 Information Industry (“MII”) allowed China Unicom to sell mobile services for 10% less than the
15 government set rate which provided a competitive edge and cellular companies were lowering
16 prices. Lu and Sophie not only knew about the impact but knew UTSI violated Chinese law in an
17 attempt to prop up demand for PAS equipment and handsets. UTSI began to sell PAS handsets with
18 SIM cards that allowed the handsets to be used in different regions than the area for which the user
19 originally contracted, which violated the “limited mobility” restrictions imposed by the MII. Indeed,
20 on 3/21/05, the MII issued Directive No. 93 that reiterated PAS was prohibited from offering
21 roaming services. Lu and Sophie knew about these restrictions. It was reported in UTSI's SEC
22 filings that the MII decided the services and subscriber rates to be offered to the public, and that the
23 MII ordered service providers to halt new deployments of PAS equipment in 5/00 pending its
24 completion of a review of the PAS technology. In 6/00, the MII issued a notice allowing PAS
25 deployments, but confirmed citywide deployments in large and medium cities would not be
26 permitted.

27 155. Lu and Sophie also knew China Telecom and China Netcom were reducing PAS
28 capital expenditures in anticipation of the eventual adoption of 3G mobile technology because UTSI

1 participated in 3G field trials in China. As the Company reported in its 2002 Form 10-K, UTSI
2 established a global team of hundreds of engineers across China and the U.S. to engage in the
3 different aspects of 3G solutions, was selected by the MII in 11/01 to conduct technical 3G field
4 trials, had successfully passed phase one of the field trials by 3/02 and was in the process of phase
5 two.

6 **156. Expansion of business plan to include international sales indicates Lu and**
7 **Sophie knew PAS equipment orders would decline:** According to the SEC C&D order, UTSI
8 expanded the Company's business plan in late 2002 to include growth on an international scale.
9 This expansion of the business plan in late 2002 further supports the inference Lu and Sophie knew
10 China Telecom and China Netcom would be reducing orders for PAS equipment in 2003.

11 **157. Delivery delays and product quality problems reduce gross margins:** Information
12 provided by former employees, the substantial reduction in PAS equipment gross margins from 40%
13 in 2002 to 32% in 2003 and the failure to report overall gross margins in line with guidance raise a
14 strong inference Lu and Sophie knew there were undisclosed operational problems that were
15 reducing gross margins by delaying revenue recognition and increasing costs of the backlogged sales
16 of PAS equipment and broadband equipment. CW1, CW2, CW3, CW8, CW13, CW16, CW17,
17 CW19 and CW20 stated there were problems in 2003, including numerous delays in delivering
18 equipment to fulfill orders and quality issues with the equipment once it was delivered that delayed
19 installation and customer acceptance. CW1 said delivery delays were caused by discrepancies
20 between the part numbers maintained on the UTSI systems in Alameda and China which also
21 precluded the Company from keeping track of inventory. CW2 and CW3 said there were numerous
22 shipping delays caused by discrepancies between the part numbers on the purchase orders and
23 packing slips and the numbers on the actual parts that prevented the shipments from clearing
24 customs.

25 **158.** CW3 said delays in manufacturing equipment and the inability to track component
26 part numbers caused delays in completing orders and shipments, and that the problems were
27 pervasive and systemic. According to CW3, purchase orders included 50-100 part numbers that
28 would be manufactured in China and then delivered to the customer. CW3 said the parts and part

1 numbers on the purchase orders often did not match the numbers at the China manufacturing facility
2 because the product had been revised and/or the part number changed. As a result, shipments
3 included revised parts and parts with numbers that did not match the purchase order (and packing
4 slip) that caused delays in clearing customs. CW8 said the problems impacted shipments of
5 mVision, NetRing and PAS equipment.

6 159. CW2 was responsible for product returns in 2003 and said a majority of product
7 returns were due to manufacturing problems, including the inability to procure needed materials, the
8 use of poor quality materials and unqualified personnel that caused the products to not work
9 correctly.

10 160. CW13, a former UTSI engineering manager, said unrealistic product development
11 schedules combined with a weak and inexperienced engineering team trying to develop very
12 complex products required long hours and compromised the quality of the products. CW13 said
13 product development schedules were tight and unrealistic because the Company agreed to unrealistic
14 customer delivery demands to make sales that would otherwise go to established vendors such as
15 Cisco Systems, Inc., Lucent Technologies Inc. and Motorola, Inc.

16 161. CW20 said Reliance Telecom was generally not happy with the features of the AN2k
17 digital loop carrier product purchased from UTSI in 2003 and that as a result, UTSI provided a side
18 letter agreement to deliver additional features that Reliance desired. The SEC C&D Order shows Lu
19 and Sophie knew about the side letter, and that side letters existed on many other transactions.

20 162. CW16, a former engineer and project manager, said the Company's R&D engineers
21 in China claimed they had other priorities and would not make repairs or modifications to
22 components that were required for the products to function properly. CW16 said the failure to make
23 required repairs and modifications caused deals with DSSI and SOFTBANK to fail. CW16 sent the
24 engineers in China "traces" and "exact proof" of where and why products were failing but said the
25 quality issues were not resolved on timely basis or at all. CW16 complained to Waranauskas,
26 CW16's boss, who was also fed up with the China-based engineers unwillingness to make necessary
27 repairs and modifications.

1 163. CW16 said there were huge issues with the Company's mVision software and that the
2 hardware needed to be overhauled. The problems were caused by the failure of the China-based
3 engineers from documenting how the mVision product was designed or developed and by the
4 engineering documents that did exist being written in Chinese. CW16 explained that an "as-built
5 document" and a "statement of work" are required for any engineering project. The "as-built
6 document contains drawings of the network structure and details about how the network is compiled
7 and delivered including the system backups and copies of software used in the network. The
8 "statement of work" includes the method of procedure which details whether the customer or UTSI
9 was responsible for certain areas of the network and the time, personnel and project management
10 requirements for changes to the network. It also includes a test plan for the network and instructions
11 on how project acceptance will be conveyed. CW16 said the "as-built document" and the "statement
12 of work" were crucial to any network project because they document whether UTSI or the customer
13 would be liable if the customer's network was damaged in the process of network changes,
14 maintenance or enhancements. Further, if the product failed, the "as built document" was the
15 starting point for determining how the product can be reconfigured to function effectively.

16 164. CW16 said that UTSI's China-based R&D engineers failed to maintain
17 documentation showing what work had been done in development and who was responsible for
18 certain areas of a customer's network. CW16 said there was a chronic failure to consistently create
19 "as-built documents" and "statements of work" which made it impossible to keep track of the
20 configuration of products in the network, how the products interfaced and changes made to the
21 products and interfaces when trying to improve the functionality of the network. For example,
22 CW16 said the failure to document that a UTSI engineer had reduced video speed to 24 frames per
23 second from 32 frames per second caused delays in determining why video was "freezing up" on
24 DSSI's IPTV network and UTSI engineers incorrectly claiming the "freezing up" was not their fault.

25 165. CW17, whose group was trying to improve UTSI's product quality and repair
26 process, stated that product quality and repairs were formidable issues for UTSI in 2003 and 2004
27 because (1) the Company's China-based engineers failed to document the development of products,
28 and (2) the China-based engineers were unwilling to make changes to improve the quality of UTSI's

1 products. Like CW13 and CW16, CW17 said the China-based engineers were unwilling to make
2 changes, modifications or improvements to the Company's products because they had to spend their
3 time manufacturing product to keep up with the Company's rapid growth. Indeed, CW17 said the
4 Company's service support organization was next to nothing and in shambles.

5 166. CW17 said that UTSI did not have a built-in quality review process in manufacturing
6 that led to numerous product quality problems and delays in repairing products. According to
7 CW17, about 90% of the Company's products were manufactured in China when CW17 joined
8 UTSI in 5/03. Like CW16, CW17 said that documentation regarding the development of products
9 was insufficient. There were many instances where CW17 and CW17's peers requested product
10 documentation from the manufacturing personnel in China for use in identifying sources of quality
11 issues and were told that the documentation did not exist or that the documentation did not
12 accurately reflect the component parts included in the product. For example, CW17 said that the
13 manufacturing personnel in China inappropriately created new part numbers for components and
14 final products as the products evolved from inception to end-of-life and changed serial numbers on
15 component parts without documenting the changes. These changes made it difficult to identify the
16 vendor that manufactured the component part if it failed. They also caused delays in parts clearing
17 customs as custom authorities typically tracked products and component parts via serial numbers.

18 167. Like CW16, CW17 said the engineering employees in China were simply unwilling
19 to make changes to improve the quality of UTSI's products. According to CW17, engineers in
20 China focused on manufacturing product to keep up with the Company's rapid growth and were not
21 interested in ensuring optimal repair services and support after a sale was made. Further, even when
22 repairs were made, the changing of part numbers and serial numbers delayed the time it took to
23 repair and then deliver the repaired product. CW17 explained that China customs required parts
24 returned through China customs have the same part numbers that were subsequently exported but
25 that many repaired products included component parts with different numbers that delayed the
26 shipment from clearing customs. As a result, it took 3-6 months to repair and return product when
27 typical and expected turnaround times were 30-60 days.

1 168. CW17 explained that some products manufactured or repaired in China, including
2 IPTV set top boxes, had high failure rates. Some failure rates were 10% when acceptable failure
3 rates were less than 1%. Engineering change orders had to be issued on a wide scale for DSLAMs
4 sold in Japan. In addition, CW17 said there were problems with product sold to SOFTBANK that
5 CW17 believed to be the result of repairs done by manufacturing. Delays in delivering repaired
6 product to SOFTBANK caused by delays in products clearing customs further strained the
7 relationship between UTSI and SOFTBANK. As a result, in approximately 2004 or 2005, the
8 products were repaired at Rolling Meadows or by a vendor in Japan to avoid the 3-6 month delays at
9 Chinese customs caused by the part number problems. In 2006, UTSI established a repair facility in
10 Singapore to avoid the delays.

11 169. CW17 said that UTSI with the assistance of Commworks personnel tried to improve
12 product quality and the repair process by implementing a “global worldwide quality plan” but that
13 implementation of the plan took at least three years from the time UTSI acquired Commworks in
14 5/03. Indeed, CW17 did not witness improvements until mid 2007. CW17 said that the focus of the
15 engineers in China on manufacturing to keep up with UTSI’s rapid growth was a major reason for
16 the delays in implementing the “global worldwide quality plan” and actual improvements in product
17 quality and repairs.

18 170. CW19 also said there were problems with the Company’s products. CW19 said the
19 mVision IPTV product was still not working in 2006 and 2007 and heard from colleagues that UTSI
20 lost a deal with DSSI as a result. CW19 also said the Company’s DSLAM product was not viable in
21 North America because the DSLAMs failed to meet size and power usage standards.

22 171. **Lu and Sophie knew there were significant internal control weaknesses that**
23 **caused UTSI to improperly recognize revenue and overstate gross margins:** Lu and Sophie also
24 knew there was no basis for the gross margin guidance or their statements that the backlog provided
25 tremendous visibility into UTSI’s future results in 2003 because they knew that revenues were being
26 recorded without sufficient controls in place to ensure contract terms had been satisfied and that
27 related-party transactions were properly reported. Indeed, Lu, Sophie and the UTSI Audit
28 Committee received a Management Recommendation letter from PWC in 3/03, detailing internal

1 control weaknesses identified during the December 31, 2002 year-end audit, including the need to
2 “strengthen procedures to ensure side letters and contract amendments are communicated and
3 accounted for in a timely manner.” PWC also expressed concerns with the many complex related-
4 party transactions entered into by UTSI, and informed UTSI that it did not adequately disclose
5 significant transactions involving joint venture arrangements between UTSI and its customers.

6 **172. Failure to Report Gross Margins in Line with Guidance:** The substantial decline
7 in PAS equipment gross margins, the failure to report overall gross margins in line with guidance
8 and the subsequent restatements of gross margins confirm there was no reasonable basis for the
9 guidance, and strengthen the inference Lu and Sophie knew it. After reporting a 40% gross margin
10 on sales of PAS equipment in 2002, the gross margin on sales of PAS equipment declined to 32% in
11 2003. UTSI originally reported a 31.8% gross margin in 3Q03, a 31% gross margin in 4Q03, and a
12 32.4% gross margin in FY03, substantially less than the 34%-35% they told investors to expect on
13 4/16/03.

14 **173.** UTSI restated and reduced the 4Q03 gross margin to 29.2%, and the FY03 gross
15 margin to 31.8% on 4/13/05, after the Company recorded a \$7.5 million inventory impairment
16 charge incurred by MDC, a related party whose results should have been consolidated with UTSI’s
17 results. The SEC C&D Order and the explanation for the restatement in the 2003 Form 10-K/A filed
18 on 4/13/05 establish that Lu and Sophie knew that MDC was formed in 2001 by UTSI employees to
19 provide services to UTSI, that UTSI officers and employees owned 67% of MDC, that UTSI entered
20 into a complex transaction in 2003 involving MDC and another customer in China, whereby MDC
21 took ownership of the impaired UTSI inventory, and that UTSI had adopted FIN 46 which required
22 MDC to be treated as a consolidated entity.

23 **174.** The 4Q03 and FY03 gross margins were restated and reduced a second time to 29.1%
24 and 31.7% on 6/1/06 after UTSI reversed \$7.8 million of revenue that was improperly recognized in
25 4Q03, and \$24.1 million of revenue improperly recognized on FY03. The restatement announced on
26 10/10/07 reduced the FY03 gross margin to 31.6%, and would have reduced the 4Q03 gross margin,
27 but UTSI only restated FY03, not any of the quarters when the 10/10/07 restatement was announced.

175. **Bribes to Procure Orders:** Lu and Sophie knew that there was no basis to represent the backlog provided tremendous visibility, and that gross margins would improve in 2003 because, as detailed above, they knew orders were being booked and revenues recognized without controls in place to assure the contracts were not obtained by bribing foreign government officials in violation of the FCPA. The same significant internal control weaknesses that allowed the Company to improperly recognize more than \$400 million of revenue between 2000 and 2005 also allowed the bribes to occur. The significant internal control weaknesses at UTSI, the investigations by the Company, the SEC and the DOJ of possible violations of the FCPA, and the unwinding of the Mongolian joint venture transaction, strongly infer that UTSI did obtain sales by bribing foreign government officials in violation of the FCPA.

176. **Belated Admission of Inability to Forecast:** After continuing to miss gross margin guidance in 2003 and 2004, Sophie conceded he could not forecast UTSI's future results by stating during the 1/6/05 conference call that the Company would only provide guidance for one quarter into the future. As detailed herein, Sophie did not have a reasonable basis to provide forecasts for just one quarter into the future given the problems described above. In fact, UTSI failed to report results in line with guidance in 2Q05, 3Q05, 4Q05 and 3Q06.

177. **Insider Selling:** Suspicious insider selling by Lu, Sophie and other UTSI executives – most of which occurred after the false 4/16/03 statements caused the stock price to increase – strengthens the inference Lu and Sophie knew their statements during the 4/16/03 conference call were materially false and misleading.

178. **Effect on Stock Price:** UTSI's stock price increased more than 17% from \$19.9 on 4/16/03 to \$23.39 on 4/22/03. The PPG declined 0.6% and the NASDAQ increased by 4%.

179. **Loss Causation/Date of Loss:** Class members were damaged by the false and misleading statements when the price of the stock declined after some of UTSI's true financial condition was revealed:

- Between 9/3/03 and 9/26/03, the price of the Company's stock declined 29%, compared to a 1.75% decline in the PPG and a 3.3% decline in the NASDAQ. Analysts attributed the decline to concerns that China Telecom and China Netcom would reduce or stop purchasing UTSI's PAS products, and shift capital expenditures

1 to 3G infrastructure products in anticipation of receiving 3G licenses from the
2 Chinese government.

- 3 • UTSI's stock price declined 8.4% from \$34.06 on 10/23/03 to \$31.20 on 10/24/03,
4 compared to a 0.5% decline in the PPG and a 1.1% decline in the NASDAQ after the
5 Company revealed that the gross margin in 3Q03 was 31.8%, not 34% as represented
6 on 4/16/03, and that the gross margin was expected to be 30%-32% in 4Q03, not
7 34%-35% as represented on 4/16/03.
- 8 • On 3/31/05, the Company's stock price declined 7.5% from \$11.84 to \$10.95,
9 compared to a 1.2% increase in the PPG and a 0.3% decline in the NASDAQ after
10 UTSI announced that (1) there would be a delay in filing the 2003 restated financial
11 statements and the 2004 Form 10-K because more time was needed to finalize the
12 assessment of internal control over financial reporting and (2) additional deficiencies
13 had been identified. Two weeks later, UTSI restated its 2003 financial restatements
14 and consolidated the results of MDC, which caused 4Q03 and FY03 gross margins to
15 decline.
- 16 • On 2/9/06, the Company's stock price declined 3.2% from \$6.81 to \$6.59,
17 compared to a 1% decline in the PPG and a 0.5% decline in the NASDAQ after
18 UTSI announced that it had improperly recognized \$22 million of revenue between
19 2003 and 2005 on a contract with a customer in India, and that the Audit Committee
20 had initiated an investigation to determine if the Company's previously issued
21 financial statements needed to be adjusted.
- 22 • On 3/17/06, the Company's stock price declined 6.1% from \$6.24 to \$5.86,
23 compared to a 0.4% decline in the PPG and a 0.3% increase in the NASDAQ after
24 the Company reported on 3/16/06 that there would be a delay in the filing of the 2005
25 Form 10-K because the Audit Committee needed additional time to investigate the
26 \$22 million of improperly recognized revenue on the contract with a customer in
27 India and certain other transactions. Two months later, UTSI announced it would
28 restate and reduce revenues by \$49.6 million, including \$24 million in 2003 that
caused further reductions in the 4Q03 and FY03 gross margins.
- The Company's stock price declined 34.5% from \$4.73 on 7/23/07 to \$3.10 on
7/30/07, compared to a 3.8% decline in the PPG and a 4% decline in the NASDAQ
after UTSI reported on 7/24/07 that it was reviewing historical sales contracts with
some of its customers in China that could impact revenue recognized in previously
issued financial statements.
- The Company's stock price declined 8.1% from \$4.93 on 10/10/07, to \$4.53 on
10/12/07, compared to no change in the PPG and a 0.2% decline in the NASDAQ
after UTSI reported on 10/10/07 that the investigation of the China sales contracts
would require UTSI to restate and reduce revenues reported from 2000 to 2005 by
\$270 million and net income by \$124 million. This restatement caused the FY03
gross margin to decline to 31.6%.

183. **True Facts:** The substantial decline in PAS orders from \$453 million in 1Q03 to \$245 million in 2Q03 establishes that there was not strong and growing demand across all product lines and that bookings were not strong for the quarter as Lu and Sophie represented. Gross margins did not stay at current levels:

Period	7/17/03 Guidance	Originally Reported	4/13/05 Restatement	6/1/06 Restatement	10/10/07 Restatement
3Q03	34%	31.8%	31.8%	31.8%	N/R
4Q03	34%	31.0%	29.2%	29.1%	N/R
FY03	34%-35%	32.4%	31.8%	31.7%	31.6%

The failure to report gross margins in line with guidance establishes the backlog did not provide tremendous visibility into UTSI's future results.

184. **Scienter and Factual Basis for Scienter: Lu and Sophie knew the continuing undisclosed and widespread problems prevented them from providing accurate guidance:** Lu and Sophie continued to know there was no reasonable basis for their guidance because they knew (1) China Telecom and China Netcom substantially reduced orders for PAS equipment in 2Q03, (2) gross margins on PAS equipment sales were declining due to the reduced demand and aggressive pricing, and (3) gross margins on PAS equipment sales and broadband equipment sales were being negatively impacted by the undisclosed operational problems that were delaying revenue recognition and increasing the costs of the backlogged sales. In addition, Lu and Sophie knew there were significant internal control weaknesses that precluded them from knowing if (1) UTSI was properly recognizing revenue on sales with side agreements supplementing or amending contract terms, (2) UTSI was properly accounting for related-party transactions and (3) UTSI was obtaining sales by bribing foreign government officials in violation of the FCPA.

185. That UTSI originally reported gross margins in 3Q03, 4Q03 and FY03 that were substantially less than the 34%-35% they told investors to expect on 7/17/03 and then restated and reduced gross margins on 4/13/05, 6/1/06 and 10/10/07 confirms there was no reasonable basis for the guidance and strengthens the inference Lu and Sophie knew it.

186. **Lu and Sophie knew that China Netcom and China Telecom substantially reduced PAS equipment orders in 2Q03:** Lu and Sophie knew by 7/17/03 that *PAS equipment*

1 *orders from China Telecom and China Netcom declined 46% from \$453 million in 1Q03 to \$245*
 2 *million in 2Q03* when they told investors that bookings continued to be strong and that there was
 3 extraordinary demand for the Company's products. The importance of China Telecom and China
 4 Netcom to UTSI's financial results, the admitted close relationship between UTSI and the two
 5 companies, the expansion of the business plan in late 2002 to include growth on an international
 6 scale, the excess capacity on existing PAS networks, the statements by the former UTSI employees
 7 that shipments of PAS equipment were falling off a cliff and that UTSI was building more PAS
 8 infrastructure equipment than needed, the rapid obsolescence of low quality PAS systems, and the
 9 substantial decline in PAS equipment orders in 3Q03 and 4Q03, strongly infer Lu and Sophie knew
 10 China Telecom and China Netcom would continue to substantially reduce orders in 2003. PAS
 11 equipment orders declined to \$200 million in 3Q03 and to \$105 million in 4Q03.

12 187. **Lu and Sophie knew the decline in PAS equipment orders was unusual:** Lu and
 13 Sophie knew that the decline in orders in 2H03 was unusual because as Lu stated during UTSI's
 14 9/25/03 conference call, China Netcom's capital expenditures were typically heavier in the second
 15 half of the year.

16 188. **Insider Stock Sales:** Additional sales of UTSI stock by Lu, Sophie and other UTSI
 17 executives after 7/17/03 as the Company's stock price was increasing to its Class Period high of
 18 \$45.36 on 8/21/03 strengthens the inference Lu and Sophie knew there was no reasonable basis for
 19 the guidance.

20 189. **Motive – Need to Raise Funds:** The need to raise funds to diversify the Company's
 21 operations away from the declining China PAS market also indicates Lu and Sophie wanted to keep
 22 the stock price high by making materially false and misleading statements, and by concealing the
 23 adverse information described above. After the Company filed a Form S-3 Registration Statement in
 24 8/03 to register \$500 million of securities, Sophie repeatedly assured investors UTSI had not planned
 25 to raise funds throughout 2003. On 1/8/04, however, the Company raised \$475 million by issuing
 26 12.1 million shares at \$39.75 per share. The funds were used to acquire the handset division of
 27 Audiovox, which now comprises a majority of the Company's revenues.

1 190. **Effect on Stock Price:** In the two days following UTSI's 7/17/03 earnings release
2 and conference call, the Company's stock price increased 10% from \$37.98 to \$41.83 compared to a
3 0.2% increase in the PPG and a 1% decline in the NASDAQ.

4 191. **Loss Causation/Date of Loss:** As detailed in ¶179, Class members were damaged by
5 the false and misleading statements when the price of the stock declined on 9/3-26/03, 10/24/03,
6 3/31/05, 2/9/06, 3/17/06, 7/23-30/07 and 10/11-12/07 after some of UTSI's true financial condition
7 was revealed.

8 192. **Nature of Loss:** Lead Plaintiffs and Class members purchased UTSI stock at
9 artificially inflated prices after 7/17/03. If Lu and Sophie had acknowledged that there was not
10 growing and strong demand for the Company's products, that the backlog did not provide
11 tremendous visibility into future results and that they could not accurately forecast future gross
12 margins, investors would have known the true condition of UTSI and lowered their expectations
13 about the Company's current and future prospects which would have caused the stock price to
14 decline as it did on the dates listed above.

15 193. **Date of Statements and Statements:** On 9/25/03, UTSI issued a press release and
16 held a conference call – described as extremely positive in a 9/25/03 ThinkEquity Partners LLC
17 report – to “reiterate the strength of the company's outlook” and to address investors' concerns about
18 the impact of 3G on UTSI's sales. During the conference call, Lu stated that (1) “[t]he purpose of
19 today's call is to *reiterate the strength in the business*, as we stated in the guidance we [] gave on
20 our Q2 earnings call in July,” and (2) “UTStarcom *continues to see the strong demand* across China
21 for our PAS solutions.” During the conference call, Sophie stated, “There's been several rumors that
22 the company is coming to market with an offering. *We have no plans to come to the market with*
23 *any kind of debt or equity offering.*”

24 194. **Identity of Authors:** Lu and Sophie made the statements during the conference call.

25 195. **True Facts:** The continuing substantial decline in PAS orders from China Netcom
26 and China Telecom from \$453 million in 1Q03 to \$245 million in 2Q03 to \$200 million in 3Q03
27 establishes that there was not strong demand across China for PAS solutions as Lu represented.
28 UTSI failed to report 3Q03, 4Q03 and FY03 gross margins in line with the 7/17/03 guidance that Lu

1 reiterated on 9/25/03 and subsequently restated and reduced 4Q03 and FY03 gross margins. The
 2 need to diversify away from the undisclosed declining China PAS market and the sale of 12.1
 3 million shares of UTSI stock to Banc of America on 1/8/04 – just three months after Sophie said
 4 there were no plans to do so – raises a strong inference that the Company did plan to come to market
 5 with an equity offering on 9/25/03.

6 **196. Scierter and Factual Basis for Scierter: Continuing Decline in PAS Equipment**
 7 **Orders:** Lu and Sophie knew there did not continue to be strong demand across China for PAS
 8 solutions because by 9/25/03, they knew PAS equipment orders received from China Telecom and
 9 China Netcom continued to decline in 3Q03. After declining from \$453 million in 1Q03 to \$245
 10 million in 2Q03, PAS equipment orders declined to \$200 million in 3Q03. The substantial decline in
 11 orders from 1Q03 to 3Q03, the importance of China Telecom and China Netcom to the Company's
 12 financial results, the close relationship between UTSI and its two largest customers, the excess
 13 capacity on existing PAS networks, the description of the decline in PAS equipment shipments by
 14 the former UTSI employee quoted in the 10/29/07 edition of *The Recorder* ("It looked like
 15 everything was falling off a cliff in terms of shipments."), and the continual decline in orders in
 16 4Q03 and 2004, raise a strong inference Lu and Sophie knew China Telecom and China Netcom
 17 planned to substantially reduce PAS equipment orders in 4Q03 and 2004.

18 **197. Lu and Sophie knew the undisclosed and widespread problems prevented them**
 19 **from providing accurate guidance:** Lu and Sophie knew there was no reasonable basis to reiterate
 20 the 7/17/03 guidance because they knew (1) China Telecom and China Netcom substantially reduced
 21 orders for PAS equipment again in 3Q03, (2) gross margins on PAS equipment sales were declining
 22 due to the reduced demand and aggressive pricing and (3) gross margins on PAS equipment sales
 23 and broadband equipment sales were being negatively impacted by the undisclosed operational
 24 problems that were delaying revenue recognition and increasing the costs of the backlogged sales.
 25 In addition, Lu and Sophie knew there were significant internal control weaknesses that precluded
 26 them from knowing if (1) UTSI was properly recognizing revenue on sales with side agreements
 27 supplementing or amending contract terms, (2) UTSI was properly accounting for related-party
 28

1 transactions and (3) UTSI was obtaining sales by bribing foreign government officials in violation of
2 the FCPA.

3 198. That UTSI originally reported gross margins in 3Q03, 4Q03 and FY03 that were
4 substantially less than the 34%-35% they told investors to expect on 9/25/03 and then restated and
5 reduced gross margins on 4/13/05, 6/1/06 and 10/10/07 confirms there was no reasonable basis for
6 the guidance and strengthens the inference Lu and Sophie knew it.

7 199. **Lowering of Gross Margin Guidance Just Six Days Later:** On 10/1/03, UTSI
8 issued a press release and revealed that gross margins would be 32% in 3Q03 because lower margin
9 PAS handset sales had increased as a percentage of overall sales. It is implausible Lu and Sophie did
10 not know gross margins would be 32% in 3Q03 on 9/25/03 when there were just five days left in the
11 quarter. If they did not know it, then they knew their repeated assurances that the Company's
12 backlog provided them with tremendous visibility into future results were false.

13 200. **Motive – Need to Raise Funds:** Sophie and Lu knew Sophie's assurance that UTSI
14 had "no plans to come to the market with any kind of debt or equity offering" was false. Just three
15 months later, UTSI sold 12.1 million shares for \$475 million. UTSI needed to raise funds by selling
16 inflated stock to diversify the Company's product offerings and to reduce the Company's
17 dependence on China PAS sales – which each of the Individual Defendants knew would decline due
18 to the substantial decline in orders received from China Telecom and China Netcom.

19 201. **More Insider Selling:** Additional sales of UTSI stock by Lu, Sophie and other UTSI
20 executives detailed in ¶¶135-138 strengthens the inference Lu and Sophie knew their statements
21 were materially false and misleading.

22 202. **Effect on Stock Price:** Despite the reassurances made by Lu and Sophie during the
23 9/25/03 conference call, the price of UTSI's stock declined 11.3% from \$35.08 on 9/24/03 to \$31.24
24 on 9/26/03, compared to a 3.1% decline in the PPG and a 2.8% decline in the NASDAQ.

25 203. **Loss Causation/Date of Loss:** As detailed in ¶179, Class members were damaged by
26 the false and misleading statements when the price of the stock declined on 10/24/03, 3/31/05,
27 2/9/06, 3/17/06, 7/23-30/07 and 10/11-12/07. In addition:

- UTSI's stock price declined 9.5% from \$41.34 on 1/8/04 to \$37.40 on 1/9/04, compared to a 1.6% decline in the PPG and a 0.6% decline in the NASDAQ after the Company revealed it had sold 12.1 million shares for \$475 million, which was contrary to the representations on 9/25/03 that there were no plans to come to the market with any kind of debt or equity offering.

204. **Nature of Loss:** Lead Plaintiffs and Class members purchased UTSI stock at artificially inflated prices after 9/25/03. If Lu and Sophie had admitted that there was not strong demand across China for PAS solutions, that they could not accurately forecast future financial results and that UTSI did in fact plan to come to market with an offering, investors would have known the true condition of UTSI and lowered their expectations about the Company's current and future prospects, which would have caused the stock price to decline as it did on the dates listed above.

205. **Date of Statements and Statements:** On 10/23/03, UTSI issued a press release and held a conference call to report the Company's 3Q03 results. During the 10/23/03 conference call, Lu and Sophie made the following statements:

Lu: *[O]ur bookings remain strong for the quarter and our visibility now extends well into 2004. . . .*

* * *

Sophie: Gross margins. Given the continued upside in handsets and ramping revenues in India, our *gross margins for the fourth quarter of 2003 are anticipated to range between 30 and 32%. . . .*

* * *

Our philosophy on *guidance will continue to be conservative. . . .*

* * *

Full-year 2004 guidance is as follows. Revenues should be in the range of 2.4 to 2.5 billion . . . Full-year 2004 GAAP EPS should be in the range of \$1.92 to \$1.95 Revenues from outside Mainland China are anticipated to be approximately 20 to 25% of total revenues with a growth rate of approximately 85% over 2003.

* * *

In total *we expect international revenues between 500 and 600 million in 2004. . . .* wire line systems should be approximately 15% of revenues Handsets should be approximately 55% Wireless systems will be approximately 30%, reflecting continued expansion and new deployments of PAS networks, both inside and outside of Mainland China *Gross margins for 2004 should range between*

1 **30 and 32% due to continued strong PAS subscriber and handset growth**, a
 2 significant ramp in India, and reflective of continued world wide competitive and
 pricing trends in telecom. . . .

3 * * *

4 Shelf registration and offering. Also in July we filed a \$500 million universal
 shelf registration. ***This has raised investor concerns on our need to raise cash.*** As
 5 you can see with the Q3 results, the Company was cash flow positive for the quarter
 and has over 440 million of cash on the balance sheet. ***We do not currently***
 6 ***anticipate any need to raise money to fund operations.*** The shelf registration was
 filed to give the Company flexibility in the future if strategic opportunities presented
 themselves, that were in the best interests of the Company and our shareholders.

8 206. **Identity of Authors:** Lu and Sophie made the statements during the conference call.

9 207. **True Facts:** Bookings did not “remain strong for the quarter” as Lu represented.

10 PAS orders from China Netcom and China Telecom continued to decline substantially from \$453
 11 million in 1Q03 to \$245 million in 2Q03 to \$200 million in 3Q03 to \$105 million in 4Q03.

12 208. UTSI did not report gross margins, international sales and EPS in line with guidance:

Period	10/23/03 Guidance	Originally Reported	4/13/05 Restatement	6/1/06 Restatement	10/10/07 Restatement
4Q03 Gross Margin	30%-32%	31.0%	29.2%	29.1%	N/R
FY03 Gross Margin	30%-32%	32.4%	31.8%	31.7%	31.6%
1Q04 Gross Margin	30%-32%	28.3%	N/A	28.3%	N/R
2Q04 Gross Margin	30%-32%	25.6%	N/A	25.8%	N/R
3Q04 Gross Margin	30%-32%	21.2%	N/A	21.1%	N/R
4Q04 Gross Margin	30%-32%	15.0%	N/A	14.9%	N/R
FY04 Gross Margin	30%-32%	22.3%	N/A	22.2%	22.1%
FY04 International Revenues (Excluding PCD)	\$500-\$600 million	\$292.9 million	N/A	\$273.7 million	\$273.8 million
FY04 EPS	\$1.92-\$1.95	\$0.64	N/A	\$0.61	\$0.45

20 209. The need to diversify away from the undisclosed declining China PAS market and the
 21 sale of 12.1 million shares of UTSI stock to Banc of America on 1/8/04 establish that defendants did
 22 need to raise money to fund operations.

23 210. **Scienter and Factual Basis for Scienter: Lu and Sophie knew PAS equipment**
 24 **orders declined again in 3Q03:** Lu and Sophie knew bookings did not remain strong in 3Q03.
 25 After declining from \$453 million in 1Q03 to \$245 million in 2Q03, PAS equipment orders declined
 26 to \$200 million in 3Q03. Lu and Sophie knew about the decline given the importance of China
 27 Telecom and China Netcom to UTSI’s results and because UTSI tracked orders from the Company’s
 28

1 two largest customers. Further, they knew the decline in 3Q03 was unusual because as Lu stated
2 during UTSI's 9/25/03 conference call, China Netcom's capital expenditures were typically heavier
3 in the second half of the year. The substantial decline in orders from 1Q03 to 3Q03, the further
4 decline in orders in 4Q03 and 2004, the importance of China Telecom and China Netcom to the
5 Company's financial results and the close relationship between UTSI and its two largest customers
6 strongly infer Lu and Sophie knew China Telecom and China Netcom planned to substantially
7 reduce PAS equipment orders in 4Q03 and 2004.

8 **211. Lu and Sophie knew PAS subscriber growth rates declined in 4Q03:** By
9 10/23/03, Lu and Sophie also knew that the decline in PAS equipment orders would continue for
10 another reason – the growth rate in China PAS subscribers was declining from 40% in 3Q03 to 25%
11 in 4Q03. UTSI reported in the 2002 Form 10-K that changes in subscriber growth rates could affect
12 the Company's operating results, and during the 10/23/03 conference call, Sophie stated that
13 “[s]ubscriber growth is the key metric to focus on as this is what ultimately drives both handset and
14 infrastructure spending.”

15 **212. Lu and Sophie knew the undisclosed and widespread product problems**
16 **prevented them from providing accurate guidance:** Lu and Sophie knew there was no basis to
17 represent that their guidance was conservative, and that gross margins would range between 30%
18 and 32% in 4Q03 and throughout 2004 because they knew (1) China Telecom and China Netcom
19 continued to substantially reduce their orders for PAS equipment, (2) gross margins on PAS
20 equipment sales were declining due to the reduced demand and aggressive pricing and (3) gross
21 margins on PAS equipment sales and broadband equipment sales were being negatively impacted by
22 the undisclosed operational problems that were delaying revenue recognition and increasing the
23 costs of the backlogged sales.

24 **213.** The fact that UTSI initially reported gross margins, international sales and EPS
25 significantly less than the guidance provided on 10/23/03 and the reasons provided for the shortfalls
26 (shipment delays, the failure to satisfy contract terms and delays in receiving customer acceptance)
27 bolsters the inference Lu and Sophie knew about the problems on 10/23/03 and that the problems
28 precluded Lu and Sophie from providing accurate guidance. Gross margins declined substantially

1 from 2003 to 2004 in all business segments. PAS equipment gross margins declined from 32% in
2 2003 to 29% in 2004, PAS handset gross margins declined from 25% in 2003 to 18% in 2004 and
3 broadband gross margins declined from 53% in 2003 to 20% in 2004.

4 214. **Lu and Sophie knew the significant internal control weaknesses prevented them**
5 **from providing accurate guidance:** Lu and Sophie knew there was no reasonable basis for their
6 guidance because they knew (1) UTSI was recognizing revenue without sufficient controls in place
7 to ensure there were not side letters amending or supplementing contract terms that precluded
8 revenue recognition, (2) UTSI did not have sufficient controls in place to ensure stock compensation
9 expenses were being recorded in accordance with GAAP (APB 25), (3) UTSI did not have sufficient
10 controls in place to ensure related-party transactions were reported in accordance with GAAP (FIN
11 46), and (4) UTSI did not have sufficient controls in place to ensure sales were not being obtained by
12 bribing foreign government officials in violation of the FCPA.

13 215. Gross margins in 4Q03 and FY03 were restated and reduced on 4/13/05 by
14 consolidating the results of MDC and recognizing a \$7.5 million impairment charge, reduced again
15 when UTSI restated and reduced 2003 revenue by \$24 million on 6/1/06, and by \$21 million on
16 10/10/07. FY04 EPS was restated twice and reduced from \$0.64 to \$0.45 after the Company restated
17 and reduced 2004 revenue by \$19.2 million on 6/1/06 and by \$105 million on 10/10/07. The
18 restatements and Lu's and Sophie's knowledge of the significant internal control weaknesses
19 strengthen the inference Lu and Sophie knew there was no reasonable basis for the guidance.

20 216. **Lu and Sophie knew there was no reasonable basis to represent international**
21 **revenues would be \$500-\$600 million in 2004:** The delays in manufacturing, delivery and
22 receiving customer acceptance caused by the problems described as pervasive and systemic by the
23 witnesses, the Company's repeated admissions of product problems, the magnitude of the shortfall in
24 international revenue originally reported in 2004 (\$293 million, not \$500-\$600 million) and the
25 decline in broadband gross margins from 53% in 2003 to 20% in 2004 raise a strong inference Lu
26 and Sophie knew there was no reasonable basis to represent international revenues would increase
27 85% to \$500-\$600 million in 2004. These sources establish the problems were widespread and well
28 known throughout the Company. The witnesses explained that (1) the changing of serial numbers on

1 component parts and products caused delays in shipments clearing customs, (2) a weak and
2 inexperienced engineering team trying to develop complex products in unrealistic time frames
3 resulted in manufacturing delays and the production of defective products, which delayed delivery
4 and receiving customer acceptance, and (3) the failure of engineers to repair or modify defective
5 products or to maintain documentation needed to identify the cause of defects also caused delivery
6 delays and delays in receiving customer acceptance.

7 217. Throughout 2004, Lu and Sophie acknowledged the problems prevented the
8 Company from reporting revenues, gross margins and EPS in line with the guidance. On 7/27/04,
9 the Company reported disappointing 2Q04 results and lowered guidance due to delays in shipments
10 clearing customs that precluded the recognition of \$28.7 million of higher margin international
11 revenue. On 9/20/04, the Company lowered guidance again explaining it would not be able to
12 recognize \$220 million of revenue on the Japan Telecom transaction because UTSI was obligated to
13 perform sales promotional activities. The information provided by CW3 and CW8 (CW3 said Japan
14 Telecom insisted it approve all equipment before it was accepted for deployment because UTSI had
15 delivered poor quality products to SOFTBANK affiliates in the past, and CW8 said there were
16 significant quality issues with the iAN-8000 MSAN (Multi-Service Access Node) equipment
17 delivered to Japan Telecom) explains why Japan Telecom insisted upon the sales promotional terms
18 of the deal. On 10/26/04, the Company revealed that \$28 million of revenue from the sale of UTSI's
19 mVision IPTV products would be recognized in 2005 rather than 4Q04. Information provided by
20 CW6, CW9, CW16 and CW19 establishes there were problems with the mVision IPTV product,
21 CW13 and the Company's lawsuit against Passave confirm there were problems with the Company's
22 GEPON product shipped to SBBC in 7/04.

23 218. In the 2004 Form 10-K, UTSI reported that it recognized \$184.4 million of revenues
24 in 2003 and \$143.7 million of revenues in 2004 from sales of ADSL (asynchronous digital
25 subscriber line), GEPON and NetRing broadband products to SBBC, and that it had delivered
26 UTSI's iAN-8000 broadband equipment to Japan Telecom in 2004. The fact that affiliates of
27 SOFTBANK, the Company's largest shareholder and third largest customer, had issues with product
28 quality in 2003 and comprised a majority of the Company's international and broadband product

1 sales in 2003 and 2004 further strengthens the inference Lu and Sophie knew about the problems and
 2 that there was no reasonable basis to represent international revenues would be \$500-\$600 million in
 3 2004.

4 219. **Additional Insider Selling:** Lu, Sophie, Soloway, Huang, Toy and Wu all sold
 5 thousands of shares on 10/28/03 and over the next two months. Considered with the other facts, the
 6 insider sales strengthen the inference Lu and Sophie knew their statements on 10/23/03 were
 7 materially false and misleading.

8 220. **Motive – Need to Raise Funds:** The fact that UTSI raised \$475 million on 1/9/04 by
 9 selling 12.1 million shares to Banc of America for \$39.25 per share raises a strong inference Lu and
 10 Sophie knew UTSI did anticipate a need to raise money to fund operations. Indeed, the \$475 million
 11 was raised just two months after Sophie represented there was no need to raise funds. Lu and Sophie
 12 knew UTSI needed the funds to diversify the Company's operations away from the undisclosed
 13 declining China PAS market which they knew was declining from the overall reduction in PAS
 14 orders, particularly new deployment orders. Defendants also needed to raise funds because in 2Q03,
 15 UTSI's cash declined by almost \$300 million after it spent approximately \$250 million to buy
 16 SOFTBANK's UTSI stock (\$140 million) and acquire Commworks (\$108 million).

17 221. **Effect on Stock Price:** UTSI's stock price declined 8.4% from \$34.06 on 10/23/03 to
 18 \$31.20 on 10/24/03 after the Company announced 3Q03 results and lowered gross margin guidance
 19 on 10/23/03. By comparison, the PPG declined 0.5% and the NASDAQ declined 1.1%.

20 222. **Loss Causation/Date of Loss:** As detailed in ¶179, Class members were damaged by
 21 the false and misleading statements made on 10/23/03 when the price of the stock declined on
 22 1/9/04, 3/31/05, 2/9/06, 3/17/06, 7/23-30/07 and 10/11-12/07, after some of UTSI's true financial
 23 condition was revealed. Class members were also damaged when the stock price declined on 3/30-
 24 31/04, 4/28-30/04, 7/28/04, 9/20/04, 1/7/05 and 10/11-12/07 after more of UTSI's true financial
 25 condition was revealed:

- 26 • UTSI's stock price declined 7% from \$30.87 on 3/29/04 to \$28.75 on 3/31/04,
 27 compared to a 0.4% increase in the PPG and a 3.7% increase in the NASDAQ after
 28 the Company issued a press release disclosing that gross margins in 1Q04 were

1 expected to be 28%. That disclosure directly contradicted the representation on
2 10/23/03 that gross margins would be 30%-32% in 2004.

- 3 • UTSI's stock price declined 13.3% from \$30.42 on 4/27/04 to \$26.36 on 4/30/04,
4 compared to a 2.6% decline in the PPG and a 5.6% decline in the NASDAQ after the
5 Company reported that the gross margin was 28% in 1Q04 and that gross margins
6 would be 27%-28% in 2Q04, 29%-30% in 3Q04 and 30%-31% in 4Q04. These
7 disclosures directly contradicted the representations on 10/23/03 that gross margins
8 would be 30%-32% in 2004.
- 9 • UTSI's stock price declined 29.3% from \$25.25 on 7/27/04 to \$17.85 on 7/28/04,
10 compared to a 0.6% decline in the PPG and the NASDAQ after the Company (1)
11 reported the gross margin was 25.4% in 2Q04, (2) lowered gross margin guidance to
12 27%-28% for 3Q04 and to 27% for FY04, and (3) revealed problems with the China
13 PAS market, including fierce pricing competition in the PAS handset market and
14 significant declines in PAS subscriber growth. These disclosures contradicted the
15 representations on 10/23/03 that gross margins would be 30%-32% in 2004.
- 16 • UTSI's stock price declined 10% from \$15.21 on 9/17/04 (Friday) to \$13.71 on
17 9/20/04, compared to a 1.5% decline in the PPG and a 0.1% decline in the NASDAQ
18 after the Company lowered revenue, gross margin and EPS guidance for 3Q04 and
19 FY04 before the market opened on 9/20/04. UTSI revealed that the gross margin
20 would be 22%-23% in 3Q04, which directly contradicted the representations on
21 10/23/03 that gross margins would be 30%-32% in 2004. The Company also
22 revealed that China PAS sales were expected to decline from \$2.1 billion in 2004 to
23 \$1.5 billion in 2005 because there had been a maturation of the PAS market in China
24 as China Telecom and China Netcom were spending less on new PAS networks and
25 reducing overall PAS capital expenditures in anticipation of next generation (3G)
26 spending. That disclosure directly contradicted the representation on 10/23/03 that
27 bookings remained strong for the quarter, and that visibility now extended well into
28 2004.
- On 1/7/05, the Company's stock price declined 20% from \$19.94 to \$15.97,
compared to a 0.8% increase in the PPG and a 0.1% decline in the NASDAQ after
UTSI announced on 1/6/05 that 4Q04 revenues would be \$135 million less than the
\$875-\$885 million previously represented on 10/26/04, and that the 4Q04 gross
margin would be 15% (not 17% as represented on 10/26/04) because of revenues
from China operations being adversely impacted by the slowing Chinese economy,
the maturation of the China PAS market and delays in the execution of contracts and
receipt of final acceptances.
- The Company's stock price declined 8.1% from \$4.93 on 10/10/07 to \$4.53 on
10/12/07, compared to no change in the PPG and a 0.2% decline in the NASDAQ
after UTSI reported on 10/10/07 that the investigation of the China sales contracts
would require UTSI to restate FY04 EPS from \$0.61 to \$0.45 and reduce revenues
by \$270 million and net income by \$124 million.

223. **Nature of Loss:** Lead Plaintiffs and Class members purchased UTSI stock after 10/23/03 at artificially inflated prices. If Lu and Sophie had admitted that bookings did not continue to be strong, that they could not accurately forecast future financial results and that UTSI did in fact plan to come to market with an offering, investors would have known the true condition of UTSI and lowered their expectations about the Company's current and future prospects, which would have caused the stock price to decline as it did when these conditions were gradually revealed on the dates listed above.

2. False and Misleading Statements in 2004

224. **Date of Statements and Statements:** On 1/9/04, UTSI issued a press release increasing 2004 revenue and net income guidance, reiterating gross margin guidance and reducing EPS guidance to reflect the dilutive effect of the 12.1 million-share offering:

– *Gross Margin guidance remains 30%-32%*

– *GAAP EPS guidance of \$1.87-\$1.92 versus previous guidance of \$1.92-\$1.95*

225. **Identity of Authors:** The press release was issued on behalf of UTSI, and the statements are also attributable to Sophie, who is quoted in the press release and listed as a source of the press release.

226. **True Facts:** As shown in the following chart, UTSI did not report gross margins and EPS in line with guidance in 2004:

Period	1/9/04 Guidance	Originally Reported	6/1/06 Restatement	10/10/07 Restatement
1Q04 Gross Margin	30%-32%	28.3%	28.3%	N/R
2Q04 Gross Margin	30%-32%	25.6%	25.8%	N/R
3Q04 Gross Margin	30%-32%	21.2%	21.1%	N/R
4Q04 Gross Margin	30%-32%	15.0%	14.9%	N/R
FY04 Gross Margin	30%-32%	22.3%	22.2%	22.1%
FY04 EPS	\$1.87-\$1.92	\$0.64	\$0.61	\$0.45

227. **Scienter and Factual Basis for Scienter:** Sophie knew the undisclosed and widespread problems prevented him from providing accurate guidance: Sophie knew there was no reasonable basis for reiterating 2004 gross margin guidance of 32% or telling investors FY04 EPS would be \$1.87-\$1.92 because he knew (1) China Telecom and China Netcom were substantially reducing orders for PAS equipment, (2) gross margins on PAS equipment sales were declining due

1 to the reduced demand and aggressive pricing and (3) revenues and gross margins on PAS
2 equipment sales and broadband equipment sales were being negatively impacted by the undisclosed
3 operational problems that were delaying revenue recognition and increasing the costs of the
4 backlogged sales. In addition, Sophie knew there were significant internal control weaknesses that
5 precluded him from knowing if (1) UTSI was improperly recognizing revenue on sales with side
6 agreements supplementing or amending contract terms and (2) UTSI was obtaining sales by bribing
7 foreign government officials in violation of the FCPA.

8 228. That UTSI reported gross margins and EPS in 2004 that were substantially less than
9 the guidance provided on 1/9/04, and then restated and reduced FY04 EPS twice from \$0.64 to \$0.45
10 confirms there was no reasonable basis for the guidance and strengthens the inference Lu and Sophie
11 knew it.

12 229. In addition, as he and Lu explained on 10/23/03, Sophie knew the guidance assumed
13 international revenues would increase 85% to \$500-\$600 million in 2004. Sophie knew there was no
14 reasonable basis for this projection because of the delays in manufacturing, delivery and receiving
15 customer acceptance caused by the product problems described by the witnesses. Indeed, UTSI
16 reported \$293 million of international revenue in 2004, well below what Lu and Sophie told
17 investors to expect, and then restated and reduced international revenue to \$273.8 million.

18 230. Sophie received a second Management Recommendation letter from PWC in 4/04
19 that again noted concerns about the use of side letters that were not forwarded to the finance
20 department. Although the letter was not received until 4/04, it is likely Sophie knew about PWC's
21 findings on 1/9/04 because PWC was in the process of auditing the Company's 2003 financial
22 statements which it completed by 2/27/04 (the date of PWC's audit opinion). The fact that FY04
23 EPS was restated and reduced twice from \$0.64 to \$0.45, and that Sophie knew about the significant
24 internal control weaknesses strengthens the inference Sophie knew there was no reasonable basis for
25 the guidance.

26 231. **Sophie knew PAS handset revenues and gross margins would decline in 2004:** By
27 1/9/04, Sophie also knew sales of PAS handsets and the gross margins on sales of PAS handsets
28 would decline in 1Q04, which would cause overall gross margins to decline. As disclosed in the

Company's 3Q03 Form 10-Q filed on 11/12/03, Sophie knew (1) average selling prices of PAS handsets declined and were expected to decline further as a result of increased competition, aggressive price reductions by competitors, and rapid technological change, (2) UTSI was subject to foreign exchange risk because sales to China were denominated in Renminbi and some costs – including the cost of PAS handset components purchased from Toshiba – were denominated in Yen, and (3) cost reduction efforts might not allow UTSI to keep pace with competitive pricing pressures or improve gross margins. From 4Q03 to 1Q04, UTSI's share of the PAS handset market declined from 70% to 60%, PAS handset revenues declined from \$308 million to \$236 million, and gross margins on PAS handset sales declined from 25% to 21%.

232. During UTSI's 4/27/04 conference call, Sophie stated that the decline in PAS handset gross margins in 1Q04 was primarily attributable to higher cost component parts purchased from Toshiba and competitive pressures. Given the magnitude of the decline in PAS handset revenues and gross margins from 4Q03 to 1Q04 and the admission in the 3Q03 Form 10-Q that PAS handset prices were expected to decline and that Yen denominated costs could adversely impact gross margins, the most plausible inference is that Sophie knew by 1/9/04 that the competitive pressures and the higher cost component parts would reduce PAS handset sales and gross margins in 1Q04.

233. **Effect on Stock Price:** On 1/12/04 (1/9/04 was a Friday), UTSI's stock price increased 4% to \$38.90 compared to no change in the PPG and a 1.2% increase in the NASDAQ.

234. **Loss Causation/Date of Loss:** As detailed in ¶222, Class members were damaged by the false and misleading guidance provided on 1/9/04 when the price of the stock declined after some of UTSI's true financial condition was revealed. The stock price declined after UTSI (1) lowered 1Q04 gross margin guidance on 3/30/04, (2) lowered 2Q04 gross margin guidance on 4/27/04, (3) reported a 2Q04 gross margin on 7/28/04 that was less than the guidance and lowered 3Q04 gross margin guidance, (4) lowered gross margin and EPS guidance for 3Q04 and FY04 on 9/20/04 and (5) lowered 4Q04 revenue, gross margin and EPS guidance on 1/6/05. In addition, the price of the stock declined after UTSI revealed on 2/9/06, 3/16/06, 7/23/07 and 10/10/07 that FY04 EPS would be restated and reduced from \$0.64 to \$0.45 because the Company had improperly recognized \$124 million of revenue in 2004.

In response to questions about the effect of competition and costs on PAS handset gross margins, Sophie stated that margins would be 25%:

Sophie: *[W]e are still maintaining our gross margin to this point right around 25% on the handsets and we think no matter how tough the competition gets that we will be able to maintain market share above 50% and we don't see any scenario where our gross margin on handsets will drop below the low 20s*

In response to a question from Lehman Brothers, Inc. analyst Tim Luke, Sophie again stated UTSI was seeing tremendous PAS infrastructure orders:

Sophie: *But we're in a cycle right now where we're seeing a tremendous amount of infrastructural orders as Hong pointed out. You guys saw the signing, we've got other contracts that you haven't seen announced yet.*

237. **Identity of Authors:** The press release was issued on behalf of UTSI and the statements are also attributable to Lu and Sophie, who are quoted in the press release. Sophie is also listed as a source of the press release. Lu and Sophie made the statements during the conference call.

238. **True Facts:** UTSI did not report gross margins, international revenues and EPS in line with guidance in 2004:

Period	1/22/04 Guidance	Originally Reported	6/1/06 Restatement	10/10/07 Restatement
1Q04 Gross Margin	30%-32%	28.3%	28.3%	N/R
2Q04 Gross Margin	30%-32%	25.6%	25.8%	N/R
3Q04 Gross Margin	30%-32%	21.2%	21.1%	N/R
4Q04 Gross Margin	30%-32%	15.0%	14.9%	N/R
FY04 Gross Margin	30%-32%	22.3%	22.2%	22.1%
FY04 International Revenues (Excluding PCD)	\$500-\$600 million	\$292.9 million	\$273.7 million	\$273.8 million
FY04 EPS	\$1.90-\$1.94	\$0.64	\$0.61	\$0.45

239. The restatements, the admitted problems with the Company's disclosure controls and procedures, the delays in manufacturing, shipment and installation and product quality problems that were delaying revenue recognition and increasing the costs of backlogged sales and UTSI reporting gross margins and EPS substantially less than guidance establish that the backlog did not provide tremendous visibility into UTSI's future financial results.

1 240. UTSI did not report PAS handset gross margins in line with the 25% guidance
2 provided. PAS handset gross margins declined substantially in every quarter in 2004, from 25% in
3 4Q03 to 21% in 1Q04, 18% in 2Q04, 14% in 3Q04 and 12% in 4Q04.

4 241. **Scienter and Factual Basis for Scienter:** Numerous facts raise a strong inference Lu
5 and Sophie knew there was no reasonable basis to represent on 1/22/04 that (1) gross margins would
6 begin the year at the low end of 30%-32% and improve slightly each quarter throughout 2004, (2)
7 the backlog gave them a tremendous amount of visibility in 2004, (3) international revenues would
8 be \$500-\$600 million in 2004, (4) GAAP EPS would be \$1.90-\$1.94 in 2004, and (5) they were
9 seeing a tremendous amount of infrastructure orders.

10 242. **Lu and Sophie knew the continued undisclosed and widespread problems**
11 **prevented them from providing accurate guidance:** Lu and Sophie knew there was no reasonable
12 basis for their statements because they continued to know that (1) China Telecom and China Netcom
13 were substantially reducing orders for PAS equipment, (2) gross margins on PAS equipment sales
14 were declining due to the reduced demand and aggressive pricing, (3) revenues and gross margins on
15 PAS handset sales were declining due to competition and increased costs of component parts
16 purchased from Toshiba and (4) revenues and gross margins on PAS equipment sales and broadband
17 equipment sales were being negatively impacted by the undisclosed operational problems that were
18 delaying revenue recognition and increasing the costs of the backlogged sales. In addition, Lu and
19 Sophie knew there were significant internal control weaknesses that precluded them from knowing if
20 (1) UTSI was properly recognizing revenue on sales with side agreements supplementing or
21 amending contract terms and (2) UTSI was obtaining sales by bribing foreign government officials
22 in violation of the FCPA.

23 243. That UTSI reported gross margins, international revenues and EPS in 2004 that were
24 substantially less than the guidance provided on 1/22/04 and then restated and reduced FY04 EPS
25 twice from \$0.64 to \$0.45 on 10/10/07 confirms there was no reasonable basis for the guidance and
26 strengthens the inference Lu and Sophie knew it.

27 244. **Lu and Sophie knew there were not a tremendous amount of infrastructure**
28 **orders because they knew China Telecom and China Netcom continued to substantially reduce**

orders for PAS equipment: Lu and Sophie knew the substantial reduction in PAS equipment orders was continuing with the Company receiving just \$105 million of orders in 4Q03 – less than 25% of the \$453 million of orders received in 1Q03. Although UTSI announced a \$200 million order with China Telecom on 1/13/04, UTSI received just \$477 million of PAS equipment orders the rest of the year. The importance of China Telecom and China Netcom to UTSI’s financial results, the admitted close relationship between UTSI and its two largest customers, the decline in PAS subscriber growth rates, and the continuing decline in orders in 2004 strongly infer that Lu and Sophie knew that China Telecom and China Netcom would continue to reduce PAS equipment orders in 2004, and that it was misleading to represent they were seeing a tremendous amount of infrastructure orders.

245. **Effect on Stock Price:** On 1/23/04, UTSI’s stock price increased 1.1% to \$36.32 – similar to the 1.4% increase in the PPG and the 0.2% increase in the NASDAQ.

246. **Loss Causation/Date of Loss:** Class members were damaged by the false and misleading statements made on 1/22/04 when the price of the stock declined after some of UTSI’s true financial condition was revealed. The stock price declined after UTSI (1) lowered 1Q04 gross margin guidance on 3/30/04, (2) lowered 2Q04 gross margin guidance on 4/27/04, (3) reported a 2Q04 gross margin on 7/28/04 that was less than the guidance and lowered 3Q04 gross margin guidance, (4) lowered gross margin and EPS guidance for 3Q04 and FY04 on 9/20/04 and (5) lowered 4Q04 revenue, gross margin and EPS guidance on 1/6/05. In addition, the price of the stock declined after UTSI revealed on 2/9/06, 3/16/06, 7/23/07 and 10/10/07 that FY04 EPS would be restated and reduced from \$0.64 to \$0.45 because the Company had improperly recognized \$124 million of revenue in 2004.

247. **Nature of Loss:** Class members purchased UTSI stock after 1/22/04 at artificially inflated prices because the true condition of UTSI was still concealed. The market still did not know the impact of the various undisclosed problems – incorrect financial reporting, operational problems delaying revenue recognition and increasing the costs of backlogged sales, the substantial decline in PAS equipment orders, the declining market share and declining gross margins on PAS handset sales and problems with UTSI’s recently developed broadband products. If investors had known of these conditions, they would have lowered their expectations about the Company’s current and future

prospectus, which would have caused the stock price to decline as it did when these conditions were gradually revealed on the dates listed above.

248. **Date of Statements and Statements:** On 4/27/04, UTSI issued a press release and held a conference call to report the Company's 1Q04 results. During the 4/27/04 conference call, defendants Lu and Sophie increased revenue guidance and reiterated international revenues would be \$500-\$600 million in 2004:

Sophie: *Full-year 2004 guidance is approximately [\$]2.75 billion, which is an increase of 40 percent over 2003. We expect in excess of [\$]2.1 billion of revenues will come from mainland China and the other 5 to 600 [m]illion will come from our global markets.*

Lu and Sophie also represented that the PAS market would continue to be strong:

Lu: *So we see a very, very strong infrastructure business towards the Q4 and Q1.*

* * *

Sophie: *And obviously, with this high of a utilization rate [70%], that means as the sub numbers continue to increase, they are going to be buying a lot of additional infrastructure and a lot more handsets.*

Lu: I think maybe I wanted to add one more point. Typically, if any company – when they are running the infrastructure in any similar environment, if they are about 60 percent, 65 percent, that's pretty much they will have to add more infrastructure is because no system can handle 100 percent of the capacities. And typically, the capacity is at the range of 70 percent. So that means that *we are very – looking forward to a more expansion business that's coming.*

Lu and Sophie also assured investors UTSI would report higher gross margins than the disappointing 28% reported in 1Q04 because infrastructure pricing was stabilizing and UTSI was taking steps to reduce the costs of infrastructure and handset sales:

Sophie: Gross margin as a percent came in as revised at 28 percent of sales. This decrease . . . is primarily attributable to higher cost of goods on component purchases denominated in Yen as a result of the appreciation of the Yen versus the dollar. . . . In addition, competitive pressures brought handset margins in at 20 to 21 percent of sales and infrastructure gross margins came in at approximately 33 percent of sales. . . . *[W]e are confident we will be able to improve gross margins later in the year.* . . .

* * *

Gross margin guidance . . . [W]e see Q2 gross margin percent consistent with Q1 levels in the 27 to 28 percent range, and Q3 gross margins should increase slightly to 29 to 30 percent and we should see further improvement in Q4 to 30 to 31 percent. . . . We are introducing internally designed ASICs in Q3 that will significantly reduce costs and exposure to Yen. Three, infrastructure pricing on

PAS is stable and contracts we are currently signing will be recognized as revenue in Q3 and Q4 with higher margins. . . .

* * *

Full-year 2004 earnings should be approximately \$1.85, inclusive of acquisition-related charges. . . .

* * *

Lu: The *infrastructure pricing* – *we’re seeing stabilizing* [W]hen Mike was saying about towards . . . *Q2, Q3 and Q4, our margin will be increasing, is because we have been seeing – we can take advantage of cost reduction and our price will be pretty much stabilized, therefore, we will see that margin increase.*

* * *

Lu: Yes. I think we are talking about the *PAS infrastructure, we have been seeing stabilization on that*. And then we were really moving towards – we have a lot of cost reduction programs, putting them together. And if you can imagine that some of our contract has been signed much earlier, so we know we have to use up some of our inventory. And then we’re *looking forward, we have a very, very clear picture of how we are going to be able to improve that margin.*

249. **Identity of Authors:** Lu and Sophie made the statements during the conference call.

250. **True Facts:** UTSI did not report gross margins and EPS in line with guidance in 2004:

Period	4/27/04 Guidance	Originally Reported	6/1/06 Restatement	10/10/07 Restatement
2Q04 Gross Margin	27%-28%	25.6%	25.8%	N/R
3Q04 Gross Margin	29%-30%	21.2%	21.1%	N/R
4Q04 Gross Margin	30%-31%	15.0%	14.9%	N/R
FY04 International Revenues (Excluding PCD)	\$500-\$600 million	\$292.9 million	\$273.7 million	\$273.8 million
FY04 Revenues	\$2.75 billion	\$2.7 billion	\$2.68 billion	\$2.58 billion
FY04 EPS	\$1.85	\$0.64	\$0.61	\$0.45

251. The continuing substantial decline in PAS orders and the subsequent decline in PAS equipment revenues and gross margins establish that the PAS infrastructure market was not “very, very strong,” and that UTSI did not receive more expansion business as PAS network capacity utilization increased from 60% to 70%. As shown in Exhibit 3, UTSI received just \$143 million of China PAS equipment orders the rest of the year: \$76 million during the remainder of 2Q04, no orders in 3Q04 and \$67 million in 4Q04. The reduced demand lowered prices and the undisclosed

1 operational problems were delaying revenue recognition and increasing the costs of the backlogged
2 sales. As a result, PAS equipment gross margins declined to 28% in 2Q04 and to 25% in 3Q04.
3 These facts also establish that the PAS infrastructure market was not stabilizing, and that Lu and
4 Sophie did not have a “very, very clear picture” of how UTSI was going to improve PAS equipment
5 margins.

6 252. Problems with the development of the ASIC prevented UTSI from significantly
7 reducing costs and exposure to the Yen. Those problems contributed to continuing substantial
8 declines in PAS handset gross margins in every quarter in 2004, from 25% in 4Q03 to 21% in 1Q04,
9 to 18% in 2Q04, to 14% in 3Q04 and to 12% in 4Q04.

10 253. **Scienter and Factual Basis for Scienter:** Numerous facts raise a strong inference Lu
11 and Sophie knew there was no reasonable basis to represent on 4/27/04 that (1) gross margins would
12 be 27%-28% in 2Q04, 29%-30% in 3Q04 and 30%-31% in 4Q04, (2) the introduction of internally
13 designed ASICs in 3Q04 would significantly reduce costs and improve PAS handset margins, (3)
14 they saw a very, very strong infrastructure business in 4Q04 and 1Q05, (4) the 70% utilization rate
15 of existing PAS networks would result in China Telecom and China Netcom buying a lot of
16 additional infrastructure and a lot more handsets, (5) PAS equipment margins would improve in
17 2Q04, 3Q04 and 4Q04, and (6) GAAP EPS would be \$1.85 in 2004.

18 254. **Lu and Sophie knew the undisclosed and widespread problems prevented them**
19 **from providing accurate guidance:** Lu and Sophie continued to know there was no reasonable
20 basis for their statements because they knew (1) China Telecom and China Netcom were
21 substantially reducing orders for PAS equipment, (2) gross margins on PAS equipment sales were
22 declining due to the reduced demand and aggressive pricing, (3) revenues and gross margins on PAS
23 handset sales had declined and would continue to decline due to competition and increased costs of
24 component parts purchased from Toshiba and (4) revenues and gross margins on PAS equipment
25 sales and broadband equipment sales were being negatively impacted by the undisclosed operational
26 problems that were delaying revenue recognition and increasing the costs of the backlogged sales.
27 In addition, Lu and Sophie knew there were significant internal control weaknesses that precluded
28 them from knowing if (1) UTSI was properly recognizing revenue on sales with side agreements

1 supplementing or amending contract terms and (2) UTSI was obtaining sales by bribing foreign
2 government officials in violation of the FCPA. Indeed, the SEC C&D Order establishes that they
3 received another Management Recommendation letter from PWC in 4/04, detailing multiple internal
4 control weaknesses (many classified as material) identified during the December 31, 2003 year-end
5 audit, including concerns about related-party transactions and the use of side letters that were not
6 forwarded to the finance department.

7 255. That UTSI reported gross margins, international revenues and EPS in 2004 that were
8 substantially less than the guidance provided on 4/27/04 and then restated and reduced FY04 EPS
9 twice from \$0.64 to \$0.45 on 10/10/07 confirms there was no reasonable basis for the guidance, and
10 strengthens the inference Lu and Sophie knew it.

11 256. **Lu and Sophie knew China Telecom and China Netcom continued to reduce**
12 **PAS equipment orders:** Lu and Sophie knew the substantial reduction in PAS equipment orders
13 would continue. Although UTSI reported \$377 million of PAS equipment orders in 1Q04, the
14 Company received just \$300 million of PAS equipment orders the rest of the year. The Company
15 received just \$143 million of PAS equipment orders after 4/27/04, including \$76 million in the
16 remainder of 2Q04, no orders in 3Q04 and \$67 million in 4Q04. The importance of China Telecom
17 and China Netcom to UTSI's financial results, the admitted close relationship between UTSI and its
18 two largest customers and the magnitude of the decline strongly infer that Lu and Sophie knew
19 China Telecom and China Netcom planned to substantially reduce orders for PAS equipment in the
20 remainder of 2004.

21 257. **Lu and Sophie expected further declines in PAS subscriber growth rates:** Lu and
22 Sophie expected the decline in China PAS subscriber growth rates to continue. Although the growth
23 rate increased from 25% in 4Q03 to 28% in 1Q04, Lu admitted during the 4/27/04 conference call
24 that subscriber growth rates in 1Q04 were driven by Chinese New Year and additional promotional
25 spending by China Telecom and China Netcom and were expected to decline: "in Q2, Q3, we are
26 seeing it will be slowing down." They did. PAS subscriber growth rates declined from 28% in
27 1Q04 to 17% in 2Q04, to 11% in 3Q04 and to 12% in 4Q04. Lu and Sophie knew, as Sophie stated
28

1 during the 10/23/03 conference call, that subscriber growth drove both PAS equipment and PAS
2 handset spending by China Telecom and China Netcom.

3 258. **Lu and Sophie knew there was no reasonable basis to represent PAS handset**
4 **gross margins would improve in 2004:** After the Company reported steep declines in PAS handset
5 sales and gross margins in 1Q04, Lu and Sophie said PAS handset gross margins would improve
6 after UTSI introduced internally designed ASICs in 3Q04. Information provided by former UTSI
7 employees directly involved in the development of the ASICs strongly infers Lu and Sophie knew
8 there was no basis for making these representations.

9 259. CW1, CW2, CW3, CW8, CW13, CW16, CW17 and CW19 said that (1) UTSI had
10 young and inexperienced engineers tasked with developing products in an unrealistic amount of time
11 because the Company agreed to unrealistic customer delivery demands to make the sales, (2) the
12 engineers failed to document the development of products, (3) the engineers were unwilling to make
13 changes to improve the quality of UTSI's products, and (4) there were numerous product quality
14 issues as a result. Given these problems, Lu and Sophie knew it was speculative at best that UTSI
15 would introduce internally designed ASICs by 3Q04. And, of course, UTSI did not.

16 260. According to CW4, the manager of the ASIC engineering group who oversaw the
17 development of the ASICs to be used in PAS handsets, there were delays in getting the ASICs ready
18 for mass production. CW4 stated that the original expectation was that the ASICs would be mass
19 produced by 9/04 but that the production date was pushed to *the end of 2004* because the ASICs had
20 not completed the quality assurance phase. As a result, CW4 said UTSI continued to buy ASICs
21 from Toshiba.

22 261. CW15, a former production manager responsible for managing the contractors who
23 were manufacturing the ASIC chips for inclusion in the Company's PAS handsets, said the delays
24 were even longer. According to CW15, UTSI's Shanghai facility was dedicated to the design and
25 development of the ASICs. UTSI designed the ASICs and outside vendors including Amco, ASE
26 and SMIC manufactured the ASICs. Once manufactured, the ASICs were shipped to the Company's
27 Hangzhou facility for incorporation into the PAS handsets. *CW15 said that UTSI's first successful*
28 *shipment of internally developed ASICs to Hangzhou did not occur until 9/05.* As a result, UTSI

continued to buy ASICs from Toshiba. CW15 also said that UTSI continued to purchase ASICs from Toshiba and a company named Atheros after UTSI was able to develop and produce its own ASICs. CW15 stated that defendant Lu spent time in the Hangzhou facility where the ASICs were incorporated into the PAS handsets.

262. Without the internally designed ASICs, the Company's PAS handset sales and gross margins continued to decline in 2004. As shown in the following chart, from 4Q03 to 4Q04, UTSI's share of the PAS handset market declined from 70% to 55%, PAS handset revenues declined from \$308 million to \$158 million, and gross margins on PAS handset sales declined from 25% to 12% (\$ in millions):

	4Q03	1Q04	2Q04	3Q04	4Q04
PAS Handset Revenues	\$308	\$236	\$194	\$160	\$158
PAS Handset Gross Margin	25%	21%	18%	14%	12%
PAS Handset Market Share	70%	60%	55%	55%	55%

263. **Effect on Stock Price:** In the three days following the 4/27/04 disclosures, UTSI's stock price declined 14% from \$30.42 to \$26.36, compared to a 2.6% decline in the PPG and a 5.6% decline in the NASDAQ.

264. **Loss Causation/Date of Loss:** Class members were damaged by the false and misleading statements made on 4/27/04 when the price of the stock declined after some of UTSI's true financial condition was revealed. The stock price declined after UTSI (1) reported a 2Q04 gross margin on 7/28/04 that was less than the guidance and lowered 3Q04 gross margin guidance, (2) lowered gross margin and EPS guidance for 3Q04 and FY04 on 9/20/04 and (3) lowered 4Q04 revenue, gross margin and EPS guidance on 1/6/05. In addition, the price of the stock declined after UTSI revealed on 2/9/06, 3/16/06, 7/23/07 and 10/10/07 that FY04 EPS would be restated and reduced from \$0.64 to \$0.45 because the Company had improperly recognized \$124 million of revenue in 2004.

1 265. **Nature of Loss:** Lead Plaintiffs and Class members purchased UTSI stock at
2 artificially inflated prices after 4/27/04 because the true condition of UTSI was still concealed. The
3 market still did not know the impact of various other undisclosed problems – incorrect financial
4 reporting, operational problems delaying revenue recognition and increasing the costs of backlogged
5 sales, the substantial decline in PAS equipment orders and gross margins, and the decline on PAS
6 handset sales and gross margins. If investors had known of these conditions, they would have
7 lowered their expectations about the Company’s current and future prospects, which would have
8 caused the stock price to decline as it did when these conditions were gradually revealed on the dates
9 listed above.

10 266. **Date of Statements and Statements:** On 7/27/04, UTSI issued a press release and
11 held a conference call to announce disappointing 2Q04 results. After assuring investors on 4/27/04
12 that gross margins would increase to 28% in 2Q04 and improve thereafter, the Company reported a
13 gross margin of just 25.4% due to “‘continued pricing pressure in China as well as supply chain
14 constraints that delayed recognition of some higher-margin international revenues.’” UTSI reported
15 that higher-margin international revenues were \$71.3 million, \$28.7 million less than the \$100
16 million expected, because “[i]t took [UTSI] longer than expected to deliver new products to
17 international customers and achieve final acceptance.”

18 267. The Company also began to reveal problems with the China PAS market. During the
19 conference call, Lu stated there was “fierce pricing competition” in the PAS handset market that
20 challenged UTSI to “reduce costs for [PAS] handsets.” After assuring investors on 4/27/04 that
21 strong PAS subscriber growth and high capacity utilization rates (70%) of existing PAS networks
22 would lead to very, very strong infrastructure business in 2004 and into 1Q05, defendants reported
23 that PAS subscriber growth had declined significantly in 2Q04, with the Company having added
24 one-third less new PAS subscribers during 2Q04 than it had guided it was on track to add in the
25 quarter during the 4/27/04 conference call, and that China Telecom and China Netcom had not added
26 additional capacity through expansions or upgrades even though utilization of PAS network capacity
27 exceeded 70% in some locations.

268. In an attempt to mitigate the impact of the declining gross margins and the declining profitability of the China PAS business, it was represented in the 7/27/04 press release that “**gross margins have reached a low point in Q2 2004 and will improve throughout the balance of 2004.**”

The initial guidance for 2005 indicated substantial revenue growth and stabilized gross margins:

Revenue Range:	3Q04:	\$695-\$700 million
	FY04:	\$2.95-\$3 billion
	FY05:	\$4-\$4.3 billion

Gross Margins:	3Q04:	27%-28%
	FY04:	27%
	FY05:	27%+

* * *

GAAP EPS Range:	3Q04:	\$0.34-\$0.35
	FY04:	\$1.65-\$1.70
	FY05:	\$2.20

269. Lu and Sophie told investors during the 7/27/04 conference call that UTSI would report higher gross margins than the disappointing 25% reported in 2Q04 because UTSI would report \$600 million of higher-margin international revenues:

Lu: We have projected **600 million in international revenues** outside of China in 2004. . . .

International bookings remain on track to make our revenue goal over (ph) 2004. As of June 30, we have booked more than 400 million in international contracts; **nearly 300 million were booked in Q2 alone.** This is greater than our total international revenues for all of the year 2003.

* * *

Sophie: **Our confidence in improved margin percentage is driven by** the following factors. One, **a significant ramp in international revenues in the second half of '04, which typically carry a higher gross margin in the range of 45 to 50 percent.**

270. During the 7/27/04 conference call, Lu stated that a “key challenge [was] to reduce costs for [PAS] handsets,” and both Lu and Sophie assured investors the introduction of UTSI’s internally designed ASICs would reduce handset costs and improve gross margins:

Sophie: Our confidence in improved margin percentage is driven by the following factors. . . . Three, **the gradual introduction of our internally designed ASICs that will significantly reduce handset costs and exposure to the yen,** as well as stabilization in the handset pricing in China.

* * *

1 *To improve our competitive cost structure and our profitability, UTStarcom will*
 2 *begin the introduction of its own Asics and PAS handsets throughout the balance*
 3 *of the year with the full benefit realized in 2005 of approximately 4 to \$6 per*
 4 *handset.*

5 * * *

6 Lu: And we will see – *the margin will be improved* in the second part of the next
 7 year and *because we will start shipping our own ASICs.*

8 271. Lu and Sophie also told investors the introduction of internally manufactured CDMA
 9 handsets would improve future results:

10 Lu: *We are on schedule with the CDG, XEC and customer approval process in*
 11 *introducing three handset designs and manufactured by UTStarcom into Audiovox*
 12 *channels. We expect to introduce these handsets in volume in the first quarter of*
 13 *2005.*

14 * * *

15 Sophie: As Hong mentioned, we continue to work to bring our own CDMA handsets
 16 to market. *We plan to introduce three CDMA handsets in late Q4 or early Q1*

17 272. Lu and Sophie represented that UTSI would capitalize on the “continued tremendous
 18 growth potential” in the China PAS market, and that gross margins would improve because of
 19 continued stabilization of infrastructure pricing:

20 Sophie: While we are dedicating resources that support growth and international
 21 sales, *we also remain focused on the China market. We intend to capitalize on its*
 22 *continued tremendous growth potential.*

23 * * *

24 *Our confidence in improved margin percentage is driven by the following*
 25 *factors. . . . Four, the continued stabilization of infrastructure pricing on PAS in*
 26 *China.*

27 * * *

28 Lu: *From an infrastructure point of view, we have already seen the stabilization of*
 our margin, so in the second half of this year, we will see the improvement and
 continuing into the next year.

29 273. **Identity of Authors:** The press release was issued on behalf of UTSI and the
 30 statements are also attributable to Lu and Sophie who are quoted in the press release, and Sophie is
 31 also listed as a source of the press release. Lu and Sophie made the statements during the conference
 32 call.

274. **True Facts:** UTSI did not report 3Q04, FY04 or FY05 financial results in line with guidance:

Period	7/27/04 Guidance	Originally Reported	6/1/06 Restatement	10/10/07 Restatement
3Q04 Revenues	\$695-\$700 million	\$645 million	\$642 million	N/R
3Q04 Gross Margin	27%-28%	21.2%	21.1%	N/R
3Q04 EPS	\$0.34-\$0.35	\$0.04	\$0.04	N/R
FY04 Revenues	\$2.95-\$3.0 billion	\$2.7 billion	\$2.68 billion	\$2.58 billion
FY04 China Revenues	\$2.35-\$2.4 billion	\$2.1 billion	\$2.1 billion	\$2.0 billion
FY04 International Revenues (Excluding PCD)	\$600 million	\$292.9 million	\$273.7 million	\$273.8 million
FY04 Gross Margin	27%	22.3%	22.2%	22.1%
FY04 EPS	\$1.65-\$1.70	\$0.64	\$0.61	\$0.45
FY05 Revenues	\$4-\$4.3 billion	\$2.93 billion	N/A	\$2.87 billion
FY05 Gross Margin	27%	15.8%	N/A	15.2%
FY05 EPS	\$2.20	(\$4.16)	N/A	(\$4.55)

275. Gross margins did not improve in 2004 from the shipment of PAS handsets with the internally developed ASICs because problems with the development of the ASIC delayed their introduction until 2005, which prevented UTSI from significantly reducing costs. Those problems contributed to continuing substantial declines in PAS handset gross margins in every quarter in 2004, from 25% in 4Q03 to 21% in 1Q04, to 18% in 2Q04, to 14% in 3Q04 and to 12% in 4Q04.

276. The continuing substantial decline in PAS orders and the subsequent decline in PAS revenues and gross margins establish that there was not “continued tremendous growth potential” in the China market, and that there had not been a stabilization in the PAS infrastructure business that would improve gross margins. PAS equipment gross margins declined to 25% in 3Q04.

277. **Scienter and Factual Basis for Scienter: Lu and Sophie knew the undisclosed and widespread problems prevented them from providing accurate guidance:** Lu and Sophie continued to know there was no reasonable basis for their statements because they knew (1) China Telecom and China Netcom were substantially reducing orders for PAS equipment, (2) gross

1 margins on PAS equipment sales were declining due to the reduced demand and aggressive pricing,
2 (3) revenues and gross margins on PAS handset sales had declined and would continue to decline
3 due to competition and increased costs of component parts purchased from Toshiba and (4) revenues
4 and gross margins on PAS equipment sales and broadband equipment sales were being negatively
5 impacted by the undisclosed operational problems that were delaying revenue recognition and
6 increasing the costs of the backlogged sales. In addition, Lu and Sophie knew there were significant
7 internal control weaknesses that precluded them from knowing if (1) UTSI was properly recognizing
8 revenue on sales with side agreements supplementing or amending contract terms and (2) UTSI was
9 obtaining sales by bribing foreign government officials in violation of the FCPA.

10 278. That UTSI reported revenues, China revenues, international revenues, gross margins
11 and EPS in 2004 that were substantially less than the guidance provided on 7/27/04 and then restated
12 and reduced FY04 revenues and EPS twice confirms there was no reasonable basis for the guidance,
13 and strengthens the inference Lu and Sophie knew it. Further, the failure of UTSI to originally
14 report revenues, gross margins and EPS in 2005 in line with the guidance, and then restating and
15 reducing FY05 revenues, gross margins and EPS confirms there was also no reasonable basis for the
16 guidance and strengthens the inference Lu and Sophie knew it.

17 279. **Lu and Sophie knew that PAS equipment orders were continuing to decline**
18 **substantially:** Lu and Sophie knew there was not “continued tremendous growth potential” in the
19 China PAS market because they knew that (1) China Telecom and China Netcom, the Company’s
20 two largest customers, ordered just \$76 million of PAS equipment in 5/04 and 6/04 and that no PAS
21 equipment was ordered in 7/04, and (2) PAS subscriber growth rates drove PAS equipment and PAS
22 handset sales and continued their downward trend by declining from 28% in 1Q04 to 17% in 2Q04.
23 The importance of China Telecom and China Netcom to the Company’s results, the clear downward
24 trend in PAS equipment orders and PAS subscriber growth rates, and the further reduction in orders
25 in 3Q04 and 4Q04 strongly infer Lu and Sophie knew that China Telecom and China Netcom would
26 not order any PAS equipment in 3Q04 and just \$67 million of PAS equipment in 4Q04. Lu and
27 Sophie also knew the substantial decline in PAS equipment orders in 2003 and 2004 would cause the
28

1 Company's PAS equipment revenues to plummet in 4Q04 and 2005 as the reduced amount of
2 backlogged PAS equipment orders were recognized as revenue.

3 280. **Lu and Sophie knew that PAS equipment margins would not improve in the**
4 **second half of 2004 and in 2005:** PAS equipment margins declined to 25% in 3Q04 and were 29%
5 in FY04. After increasing to 34% in 1Q05, they declined to 29% in 2Q05 and 3Q05. As detailed
6 above, numerous former employees stated that product problems and delivery delays were delaying
7 revenue recognition and increasing the costs of backlogged sales. The Company admitted on 1/6/05
8 that \$135 million of revenues from China operations would not be recognized in 2004 because of
9 delays in the execution of contracts and customer acceptances. The magnitude of the declines in
10 PAS equipment orders and gross margins, the information provided by the witnesses and the
11 Company's admissions on 1/6/05 strongly infer Lu and Sophie knew there was no basis to represent
12 that they were confident gross margins would improve, and that they had already seen stabilization
13 of margins.

14 281. **Lu and Sophie also knew that the substantial decline in PAS equipment orders**
15 **and PAS handset sales would prevent UTSI from reporting \$2.35-\$2.4 billion of revenues from**
16 **China in 2004:** In 2004, UTSI reported \$2.1 billion of revenues from China, \$300 million less than
17 what they told investors to expect on 7/27/04. The \$2.1 billion included \$1.39 billion of PAS
18 equipment revenues and \$749 million of PAS handset revenues. By 7/27/04, Lu and Sophie knew
19 the substantial decline in PAS equipment orders in 2003 and 2004 would cause a substantial decline
20 in PAS equipment revenues by 4Q04 – which it did. UTSI reported PAS equipment revenues of
21 \$336.5 million in 1Q04, \$427.6 million in 2Q04, \$425.8 million in 3Q04 and \$205.6 million in
22 4Q04. Quarterly PAS equipment revenues averaged \$120 million in 2005, \$105 million in 2006,
23 and just \$75 million in 2007. Lu and Sophie knew the decline in PAS equipment orders would cause
24 a subsequent decline in revenues because UTSI's backlog of purchase orders could not be
25 recognized as revenue until the customer provided final acceptance, which was not provided until the
26 PAS equipment was manufactured, delivered, installed, and implemented, a process that could take
27 up to one year. In addition, Lu and Sophie also knew there was no reasonable basis to represent
28 China revenues would be \$2.4 billion in 2004 because they knew PAS handset revenues were

1 declining due to reduced demand and increased competition. In fact, on 9/20/04, Lu and Sophie
2 admitted China revenues would be \$2.1 billion in 2004 and \$1.5 billion in 2005.

3 282. **Lu and Sophie knew the introduction of PAS handsets with internally designed**
4 **ASICs would be delayed:** Lu and Sophie also knew there was no reasonable basis to represent that
5 UTSI would improve PAS handset gross margins by introducing handsets with internally designed
6 ASICs, that would significantly reduce handset costs and exposure to the Yen because they did not
7 know when the new handsets would be introduced or whether they would improve gross margins.
8 CW4 stated that the original expectation was that the ASICs would be mass produced by 9/04, but
9 that the production date was pushed to the end of 2004. CW15 said the first successful shipment of
10 internally developed ASICs to the Company's Hangzhou facility for incorporation into the PAS
11 handset did not occur until 9/05. The importance of the ASICs to the Company's PAS handset gross
12 margins and the fact that the expected 9/04 mass production date was just one month away strongly
13 infer Lu and Sophie knew by 7/27/04 that mass production of the ASICs would be delayed, which in
14 turn would delay any improvement in PAS handset gross margins.

15 283. **Lu and Sophie knew UTSI was not on schedule to introduce internally**
16 **manufactured CDMA handsets:** Information provided by CW5 and admissions by UTSI in 2005
17 show that there were problems with the development of the CDMA handsets *before* 7/27/04, and
18 that UTSI was not on schedule with the customer approval process or for introducing the CDMA
19 handsets in volume in 1Q05 as Lu and Sophie assured investors on 7/27/04. According to CW5, a
20 UTSI contract employee who worked on the development of the CDMA handsets, in 1Q04, the
21 Company projected selling the CDMA handsets in 4Q04 and generating as much as \$7-\$10 million
22 of revenue. But CW5 stated the Company designed, developed and manufactured the handsets
23 without first consulting with prospective customers like Verizon and Sprint about what features and
24 performance standards were required or desired. As a result, CW5 stated that UTSI was unable to
25 sell the handsets to top tier wireless carriers like Verizon and Sprint because the handsets did not
26 meet their quality standards. CW5 explained that qualifying a cellular phone involved several
27 distinct testing phases referred to as CDG-1, CDG-2 and CDG-3. CDG-1 and CDG-2 involve
28

1 testing the phones with technology providers and are followed by the CDG-3 phase, which involves
2 extensive field testing by the carrier to determine whether the phones meet their requirements.

3 284. Due to the rejection of the handsets by Verizon and Sprint, CW5 said that UTSI tried
4 to sell the handsets to MetroPCS, a lower tier carrier. But CW5 said that in 5/04, MetroPCS sent
5 UTSI a letter rejecting the CDMA handsets. CW5 characterized the feedback received from
6 MetroPCS as “horrible” and said MetroPCS told UTSI the handsets were not user friendly and of
7 poor quality. CW5 also said the handsets were ugly, too expensive and did not offer customers any
8 special features that would make them attractive to purchase. For example, CW5 stated the CDM-
9 7000 handset could at best be described as an emergency phone because of the very basic level of
10 features and performance it provided and that the higher-end handsets, the CDM 7001 and 7002, did
11 not offer any features that made it stand out in comparison to competing handsets. CW5 stated that
12 none of the UTSI CDMA handsets offered anything that was not already available at cheaper prices.

13 285. According to CW5, everything went back to the drawing board after MetroPCS
14 rejected the CDMA handsets and by 7/04, it was well known inside the Company that any sales
15 would be delayed three to four months. CW5 also said that personnel from Audiovox were actively
16 involved in the efforts to sell the CDMA handsets after UTSI acquired Audiovox. CW5 stated that
17 the Audiovox personnel including the CEO were frustrated and dismayed at UTSI’s development of
18 the handsets and actually proposed that UTSI sell the phones at a loss to get in the market with the
19 hope of realizing profits in the future. According to CW5, during a 10/04 meeting, the Audiovox
20 CEO was holding one of the phones and shaking his head saying that he simply did not know what
21 to do with it. That was the “moment of truth” for CW5 about how the effort had failed.

22 286. On 5/5/05 and 8/2/05, Lu and Sophie admitted that UTSI had “made a lot of
23 mistakes,” and that shipments would be lower due to delays in the design and qualification process.
24 In the 2005 Form 10-K, the Company reported that most of the handsets sold by the PCD segment
25 were designed and built by other manufacturers. Further, gross margins on handset sales actually
26 declined. The internally designed CDMA handsets were part of the Company’s PCD segment that
27 was created in 4Q04 after the Audiovox acquisition was completed. After reporting a 4.7% gross
28 margin on PCD handset sales in 4Q04, UTSI reported lower margins in 2005 – 4.3% in 1Q05, 4.7%

1 in 2Q05, 3.6% in 3Q05 and 2.9% in 4Q05. UTSI reported that gross margins declined due to
2 product returns and increased warranty reserves – further corroborating the concealed problems with
3 the internally designed CDMA handsets.

4 287. **Lu and Sophie knew product problems would prevent UTSI from reporting**
5 **\$600 million of higher margin international sales in 2004:** The magnitude of the shortfall in
6 international revenues in 2004 (\$293 million compared to the \$600 million guidance), the witness
7 accounts, the substantial decline on broadband gross margins to 20% in 2004, and the terms of the
8 Japan Telecom transaction show that Lu and Sophie knew there was no reasonable basis to represent
9 UTSI would report \$600 million of higher margin (45%-50%) international revenues in 2004, that
10 would cause gross margins to improve from the 25.4% the Company reported in 2Q04.

11 288. As detailed above, many of the witnesses stated that the Company's broadband
12 products did not function properly due to (1) unrealistic product development schedules, (2) a weak
13 and inexperienced engineering team trying to develop very complex products, (3) the unwillingness
14 of the Company's China-based engineers to fix the problems because they were inexperienced
15 and/or too busy manufacturing products for new sales, and (4) the Company's other engineers'
16 inability to fix the problems in a timely manner or at all because the China-based engineers failed to
17 adequately document the design and development of the products, which was needed to identify the
18 cause of the product defects. In addition, the witnesses explained how there were numerous delays
19 in shipping products to customers outside of China because of delays at Chinese customs caused by
20 the changing of part numbers. Indeed, CW17 said the Company's service support organization was
21 next to nothing and in shambles, and CW3 said the delays in manufacturing equipment and delays in
22 shipment caused by the inability to track component parts were pervasive and systemic.

23 289. Several witnesses described problems with specific transactions that had arisen before
24 7/27/04. For example, CW17 said there were quality issues with the Company's Moving Media
25 2000 product that UTSI began to sell after it acquired TELOS in 4/04. Moving Media 2000 was
26 used in emergency response circumstances, and was transported by Humvee to permit cellular
27 communications in locations where cellular infrastructure had been destroyed. The product was sold
28 to the U.S. government and used in Louisiana after Hurricane Katrina and was also sold to Movical,

1 a customer in Africa. CW17 said that repairs of the Moving Media 2000 product took considerable
2 time, sometimes as long as 12-18 months. CW17 also said there were flaming issues with Moving
3 Media 2000 component parts manufactured by Unity Wireless. In fact, CW17 said these problems
4 caused inventory shortages that prevented UTSI from delivering product already sold.

5 290. CW3 said Japan Telecom insisted that it approve the quality of the Company's iAN-
6 8000 MSAN equipment it agreed to purchase in 5/04 before it was accepted for deployment because
7 UTSI delivered poor quality products to SOFTBANK in the past. According to CW8, UTSI
8 promised the equipment would be delivered in three months after Japan Telecom ordered the
9 equipment in 5/04 or 6/04.

10 291. According to the SEC C&D order, in 2Q04, Reliance proposed side agreement
11 requiring UTSI to upgrade the system after the end of the quarter that Lu and Sophie were aware of
12 and CW20 said Reliance required the side letter because it was not happy with the AN2k digital loop
13 carrier product purchased from UTSI in 2003.

14 292. The contract between UTSI and Japan Telecom and other witness accounts confirm
15 Lu and Sophie knew SOFTBANK and Japan Telecom were concerned about the quality of UTSI's
16 iAN-8000 MSAN equipment and UTSI's ability to deliver the equipment when promised. GTSM, a
17 Japanese subsidiary of UTSI, and Japan Telecom executed a contract on 8/20/04 that stated (1)
18 delivery of the goods would not be deemed complete – and transfer of ownership would not occur –
19 until Japan Telecom provided GTSM a notice of satisfaction after inspecting the goods, (2) GTSM
20 was required to pay Japan Telecom damages if they were responsible for delays in delivery, (3)
21 GTSM had to repair or replace defective equipment or refund the price, and (4) GTSM had to
22 comply with quality assurance standards and to maintain a quality assurance system – and improve
23 both if Japan Telecom told GTSM to do so.

24 293. More importantly, according to the contract, Japan Telecom would not purchase
25 UTSI's equipment unless UTSI had already lined up customers that would purchase the services
26 Japan Telecom offered through the addition of the equipment to its next-generation communications
27 network. Article 16 of the contract required GTSM to perform "sales promotion activities" for
28 which GTSM would receive "no additional consideration":

1 Article 16 (Sales Promotion Related to Services)

2 In order to promote and expand future sales of the goods of sale to [Japan Telecom],
3 [GTSM] shall perform sales promotion activities, wherein the purchases of goods of
4 sale by [Japan Telecom] are reflective of the performance by [GTSM] of said sales
5 promotion activities to be made in order to enhance telecommunications equipment
needs of [Japan Telecom], to attain further growth of the business of [GTSM] by
supplying goods for sale in response to such needs. Hence, [GTSM] shall perform
such sales promotion activities . . . for the services for no additional consideration.

6 294. In addition, according to Articles 1 and 17 of the contract, Japan Telecom and GTSM
7 would negotiate and enter into “Independent Sale and Purchase Agreements” for each specific
8 equipment purchase by Japan Telecom, but only when “the performance ratio of the goods of sale
9 reaches around [] owing to the increase of users of the services.” Although UTSI did not publicly
10 disclose the required performance ratio, the above terms show that Japan Telecom purchases were
11 contingent on GTSM procuring customers for Japan Telecom. Thus, the contract would only
12 generate revenues for UTSI if UTSI delivered non-defective equipment and customers to Japan
13 Telecom.

14 295. CW8 said that everything in the field went wrong due to the hurry to deliver the
15 equipment. CW8 said that UTSI began shipping the equipment in 9/04, but Japan Telecom
16 immediately discovered significant quality issues with the hardware and software that were so bad
17 that Ernie McClatchie, UTSI’s hardware manager responsible for the iAN-8000 MSAN equipment,
18 was let go in 1/05.

19 296. On 9/20/04, Lu and Sophie acknowledged that \$220 million of revenue from the
20 Japan Telecom transaction was included in the guidance provided on 7/27/04, and that UTSI would
21 not be able to recognize any revenue on the transaction until the Company delivered and installed the
22 equipment and completed the purported sales promotional activities. CW20, the former revenue
23 controller reviewed historical data on the Japan Telecom transaction, and said GTSM was used to
24 pass through money to Japan Telecom and did not do a lot of marketing. On 2/8/05, Sophie stated
25 that UTSI decided to exit the promotional services element of the contract, which would enable
26 UTSI to recognize \$260 million of revenue in 1Q05, and on 5/5/05, Sophie stated that UTSI had paid
27 \$150 million to distributors to exit the promotional services element of the contract. These facts
28 strongly infer that the promotional services element of the contract was part of the risk-free

contingent nature of the deal required by Japan Telecom, and that UTSI purchased revenue for itself by indirectly paying Japan Telecom at least \$150 million.

297. **Effect on Stock Price:** Investors reacted with alarm to the news of the significant decline in PAS growth in China, the sharply reduced gross margins resulting from the previously undisclosed supply chain problems and the resulting lowered guidance going forward, as those disclosures called into question many of the prior statements by Lu and Sophie regarding the strength of the Company's business in China and what UTSI's future financial results would be. On 7/28/04, UTSI's stock price declined 29.3% to \$17.85 on volume of more than 31 million shares. By comparison, the PPG and NASDAQ both declined just 0.6%.

298. **Loss Causation/Date of Loss:** Class members were damaged by the false and misleading statements made on 7/27/04 when the price of the stock declined after some of UTSI's true financial condition was revealed. The stock price declined after UTSI (1) lowered gross margin and EPS guidance for 3Q04 and FY04 on 9/20/04 and (2) lowered 4Q04 revenue, gross margin and EPS guidance on 1/6/05. In addition, the price of the stock declined after UTSI revealed on 2/9/06, 3/16/06, 7/23/07 and 10/10/07 that FY04 EPS would be restated and reduced from \$0.64 to \$0.45 because the Company had improperly recognized \$124 million of revenue in 2004, and that FY05 revenues, gross margins and EPS would be restated and reduced because the Company had improperly recognized \$58.2 million of revenues and improperly failed to record \$2.8 million of stock compensation expenses. Class members were also damaged by the false and misleading 2005 guidance as follows:

- On 5/6/05, UTSI's stock price declined 31% to \$7.24, compared to a 1% decline in the PPG and a 0.3% increase in the NASDAQ after the Company reported on 5/5/05 that (1) revenues from sales of PAS equipment and handsets in China would be 40%-50% less than 2004 revenues and (2) it was implementing a restructuring plan, including a 17% or 1,400-person reduction in force and an expansion of outsourcing the Company's supply chain and IT operations.
- On 8/3/05, UTSI's stock price declined 7.5% to \$7.90, compared to no change in the PPG and the NASDAQ after the Company reported on 8/2/05 that (1) 2Q05 results were less than the guidance provided on 5/5/05, (2) revenues would decline from \$723 million in 2Q05 to \$660-\$680 million in 3Q05, (3) gross margins would be 15%-18% in 3Q05 and (4) GAAP EPS would be a negative \$0.35-\$0.40.

- 1 • On 10/7/05, the Company's stock price declined 26% to \$5.64, compared to a 1.3%
2 increase in the PPG and a 0.3% increase in the NASDAQ after UTSI reported on
3 10/6/05 that 3Q05 results would be less than the guidance provided on 8/2/05
4 because UTSI had not completed all elements of a \$40 million contract. In addition,
5 the Company revealed that it might need to record an impairment charge to write off
6 some or all of goodwill, and that the Company had received a notice of formal
7 inquiry from the SEC into certain aspects of UTSI's financial disclosures during
8 prior reporting periods.
- 9 • On 9/22/06, the Company's stock price declined 4.7% from \$8.99 to \$8.57,
10 compared to no change in the PPG and a 0.8% decline in the NASDAQ after the
11 CFRA issued a report on 9/21/06, in which it questioned whether the Company had
12 any stock option backdating issues.
- 13 • On 11/8/06, the Company's stock price declined 8.4% from \$10.23 to \$9.37,
14 compared to a 1.3% increase in the PPG and a 0.4% increase in the NASDAQ after
15 UTSI reported on 11/7/06 that it had commenced a review of its historical equity
16 award grant practices under the direction of the Nominating and Corporate
17 Governance Committee with the assistance of independent legal counsel and
18 independent accounting consultants.
- 19 • On 1/5/07, the Company's stock price declined 3% from \$9.04 to \$8.77, compared to
20 a 1.7% decline in the PPG and a 0.8% decline in the NASDAQ after UTSI filed a
21 Form 8-K on 1/4/07 that disclosed (1) stock option grants purportedly made on
22 2/28/02 with an exercise price of \$20.25 were actually made on 3/27/02 when the
23 market price of the stock was \$25.25 and (2) stock option grants purportedly made
24 on 7/25/02 with an exercise price of \$15.72 were actually made on 7/17/02 when the
25 market price of the stock was \$20.82.
- 26 • On 2/2/07, the Company's stock price declined 1.1% from \$9 to \$8.90, compared to
27 a 0.3% decline in the PPG and a 0.3% increase in the NASDAQ after UTSI reported
28 on 2/1/07 that it would have to restate its financial statements because it failed to
 account for stock option compensation expenses in accordance with APB 25.

299. **Nature of Loss:** Class members purchased UTSI stock after 7/27/04 at artificially inflated prices because the market did not know that (1) the significant internal control weaknesses caused UTSI to report false financial results and would cause UTSI to report false results in the future, and (2) revenues, gross margins and EPS would decline because of the operational problems, the reduction in PAS equipment orders, competition in the PAS handset market, the increasing costs of manufacturing the handsets, the undisclosed problems with the development of the ASICs and CDMA handsets, and the undisclosed problems with the quality of UTSI's broadband equipment. These conditions would be gradually revealed on the dates listed above.

300. **Date of Statements and Statements:** On 9/20/04, before the market opened, UTSI issued a press release and held a conference call to announce a substantial reduction in guidance for the remainder of 2004. UTSI announced that (1) it could not recognize revenues on the \$290 million Japan Telecom contract in 2H04 (\$220 million of which had been included in the Company's 7/27/04 guidance), (2) there had been a "maturation of the PAS market in China," and "[a]s many current telecom networks in China are reaching critical mass, the carriers are spending less on the [] new networks and more on expansion and optimization of their existing networks which tend to be smaller projects," (3) PAS capital expenditures were slowing "in [a]nticipation of [n]ext-[g]eneration [n]etwork [s]pending," (4) some PAS networks were experiencing capacity usage as high as 80%, but neither expansion nor upgrades were being announced, and (5) due to the maturation of the PAS market, China PAS sales were expected to be \$2.1 billion in 2004 and \$1.5 billion in 2005. Specifically, the guidance was revised as follows:

	<u>7/27/04</u>	<u>9/20/04</u>
3Q04 Revenues	\$695-\$700 million	\$590-\$600 million
3Q04 Gross Margin	27%-28%	22%-23%
3Q04 EPS	\$0.34-\$0.35	\$0.02-\$0.04
FY04 Revenues	\$2.95-\$3 billion	\$2.75 billion
FY04 Gross Margin	27%	not provided
FY04 EPS	\$1.65-\$1.70	\$0.80-\$0.85
FY05 Revenues	\$4-\$4.3 billion	\$4-\$4.3 billion
FY05 EPS	\$2.20	\$2-\$2.20

During the 9/20/04 conference call, defendant Lu assured investors that international demand was quickly accelerating:

Lu: While PAS is [] maturing in China, ***international demand is quickly accelerating. Non-China demand and booking continue to be very strong.***

Regarding the Japan Telecom contract that was the primary reason for the revised guidance, Sophie stated the following:

Sophie: At the time we provided guidance for Q3 and the remainder of 2004 on the 27th of July, we had already received initial purchase orders for the equipment from Japan Telecom and it then based our guidance on those purchase orders. However, ***the original agreement was limited to equipment only.*** We had anticipated recording approximately 220 million revenues in the third and fourth quarters of 2004 against these purchase orders. However, ***over the course of the contract development, Japan Telecom increased the equipment value and added a strategic***

services element which increased the dollar amount and profitability of the contract to UTStarcom. But since those services are considered linked to the equipment, it ultimately leads to a longer period of time before we can recognize revenue. We now expect to recognize the entire 290 million of both equipment and services revenue in the second or third quarter of 2005.

During the conference call, Lu represented that China Netcom would increase PAS spending after completing their IPO:

Lu: *[A]fter the IPO, we are very probable that they would be coming back and spending more in the future.*

Lu and Sophie continued to represent that UTSI was “on track” to introducing ASICs that would reduce PAS handset costs and improve gross margins:

Lu: Having said that, *we are also on track on introducing our new our own ASIC and UTStarcom handsets in late Q4, which will reduce the cost of production by up to 20 percent. This should help to mitigate the recent decline of our handsets margins.* While there may be a continued short-term pressure on our handsets gross margin, we do anticipate PAS handsets gross margin will improve in 2005.

* * *

Sophie: *Our ASICS will be introduced in the fourth quarter of 2004, which will drive gross margin improvements in 2005.*

They also assured investors that the certification process of UTSI’s CDMA handsets was “progressing fairly smoothly” and was “doing quite well.”

301. **Identity of Authors:** The press release was issued on behalf of UTSI and the statements are also attributable to Lu and Sophie, who were quoted in the press release. Lu and Sophie made the statements during the conference call.

302. **True Facts:** UTSI did not report 3Q04, FY04 and FY05 results in line with the revised guidance provided on 9/20/04:

Period	9/20/04 Guidance	Originally Reported	6/1/06 Restatement	10/10/07 Restatement
3Q04 Revenues	\$590-\$600 million	\$645 million	\$642 million	N/R
3Q04 Gross Margin	22%-23%	21.2%	21.1%	N/R
3Q04 EPS	\$0.02-\$0.04	\$0.04	\$0.04	N/R
FY04 Revenues	\$2.75 billion	\$2.7 billion	\$2.68 billion	\$2.58 billion
FY04 China Revenues	\$2.1 billion	\$2.1 billion	\$2.1 billion	\$2.0 billion
FY04 EPS	\$0.80-\$0.85	\$0.64	\$0.61	\$0.45

FY05 Revenues	\$4-\$4.3 billion	\$2.93 billion	N/A	\$2.87 billion
FY05 China Revenues	\$1.5 billion	\$928.9 million	N/A	\$870.6 million
FY05 EPS	\$2.00-\$2.20	(\$4.16)	N/A	(\$4.55)

303. International demand was not accelerating because \$290 million of the \$600 million of international orders received by 9/20/04 was attributable to the Japan Telecom transaction. In addition, the witnesses stated that international orders were obtained by agreeing to unrealistic customer delivery dates that were necessary to prevent the sale from going to more established competitors. The resulting unrealistic development schedules combined with the Company's weak and inexperienced engineering team resulted in numerous problems with the newly developed broadband products that delayed customer acceptance and revenue recognition and increased the costs of the sales.

304. UTSI did not introduce the ASIC PAS handsets in 4Q04 as represented, and PAS handset gross margins did not improve. The ASIC PAS handsets were not introduced until 3Q05 due to the undisclosed development problems, and PAS handset gross margins declined throughout 2004 and 2005 to as low as 9.7%.

305. **Scienter and Factual Basis for Scienter: Lu and Sophie knew the undisclosed and widespread problems prevented them from providing accurate guidance:** Lu and Sophie continued to know there was no reasonable basis for their statements because they knew (1) China Telecom and China Netcom were substantially reducing orders for PAS equipment, (2) gross margins on PAS equipment sales were declining due to the reduced demand and aggressive pricing, (3) revenues and gross margins on PAS handset sales had declined and would continue to decline due to competition, increased costs of component parts purchased from Toshiba and the problems with the development of the ASIC PAS handsets and the CDMA handsets, (4) revenues and gross margins on PAS equipment sales and broadband equipment sales were being negatively impacted by the undisclosed operational problems that were delaying revenue recognition and increasing the costs of the backlogged sales. In addition, Lu and Sophie knew there were significant internal control weaknesses that precluded them from knowing if (1) UTSI was properly recognizing revenue on sales with side agreements supplementing or amending contract terms, (2) UTSI was properly

1 accounting for stock compensation expenses, and (3) UTSI was obtaining sales by bribing foreign
2 government officials in violation of the FCPA.

3 306. That UTSI reported FY04 revenue and EPS that were substantially less than the
4 guidance provided on 9/20/04, and then restated and reduced FY04 revenues and EPS twice
5 confirms there was no reasonable basis for the guidance, and raises a strong inference Lu and Sophie
6 knew it. Further, the failure of UTSI to originally report FY05 revenues and EPS in line with the
7 guidance, and then restating and reducing FY05 revenues and EPS confirm there was no reasonable
8 basis for the guidance and raise a strong inference Lu and Sophie knew it.

9 307. **Lu and Sophie knew international demand was not strong:** The information
10 provided by CW3 and CW8, and the terms of the 8/20/04 contract between UTSI and Japan
11 Telecom, establish that Lu and Sophie knew by 9/20/04 that there were problems with the quality of
12 products delivered to SOFTBANK. Sophie falsely stated the strategic services element was added to
13 the Japan Telecom contract and would increase the profitability of the deal for UTSI. The strategic
14 services element was actually part of the risk-free contingent nature of the deal required by Japan
15 Telecom because UTSI had historically delivered defective products to SOFTBANK affiliates.

16 308. The Company's lawsuit against Passave strongly infers Lu and Sophie also knew by
17 9/20/04 that there were problems with the GEPON product shipped to SBBC in 7/04. In its lawsuit
18 filed against Passave on 11/17/05, UTSI alleged that Passave delivered defective Gigabit-ethernet
19 semiconductor devices that caused failures of UTSI's FTTH telecommunications products
20 incorporating such devices. Specifically, UTSI alleged that it purchased in excess of 100,000 units
21 of Passave's PAS5001M3 chip *in 2003* for more than \$10 million, and incorporated the chips into its
22 FTTH product line, a majority of which (96,320 chips) were *shipped to SBBC in 7/04. By 10/04,*
23 *SBBC notified UTSI that there were problems with the FTTH products, including data*
24 *interruptions and resulting failures.* Lu's and Sophie's knowledge about the problems on 9/20/04
25 is strongly inferred from (1) the chips being shipped to SBBC in 7/04, (2) the history of problems
26 with products delivered to SOFTBANK affiliates on prior occasions, (3) and the allegations in
27 UTSI's lawsuit against Passave that SBBC notified UTSI of the problems by 10/04.

1 309. On 10/26/04, UTSI reported that \$28 million of international revenue would not be
2 recognized in 4Q04 because of delays in receiving final acceptance. That this announcement came
3 less than one month after 9/20/04 strongly infers Lu and Sophie knew about the problem on 9/20/04.

4 310. The substantial decline in broadband gross margins from 53% in 2003 to 20% in 2004
5 is additional evidence Lu and Sophie knew there were problems with UTSI's broadband products
6 and that international demand was not strong.

7 311. **Lu and Sophie knew that UTSI was not "on track" to introduce internal ASICs**
8 **in 2004:** As detailed above, several witnesses stated the Company had a weak and inexperienced
9 engineering team. CW4 stated that the original expectation was that the ASICs would be mass
10 produced by 9/04, but that the production date was pushed to the end of 2004, and CW15 said the
11 first successful shipment of internally developed ASICs to the Company's Hangzhou facility for
12 incorporation into the PAS handset did not occur until 9/05. These facts and the importance of the
13 ASICs to the Company's PAS handset gross margins strongly infer Lu and Sophie knew on 9/20/04
14 that UTSI was not on track to introduce the PAS handsets incorporating the internally designed
15 ASICs in 4Q04, or that gross margins would improve in 2005.

16 312. **Lu and Sophie knew the certification process of the CDMA handsets was not**
17 **"progressing fairly smoothly" or "doing quite well":** As detailed above, information provided by
18 CW5 and admissions by UTSI in 2005 show that there were problems with the development of the
19 CDMA handsets. The problems were so bad that Audiovox personnel were proposing the handsets
20 be sold at a loss to get in the market with the hope of realizing profits in the future. In 2005, Lu and
21 Sophie began to admit that the handsets would not be introduced until 3Q05, and that other models
22 would not be introduced until 2006.

23 313. **Lu and Sophie knew that China Netcom would not increase capital expenditures**
24 **on PAS following its IPO:** By 9/20/04, there were only ten days left in 3Q04 and UTSI had not
25 received – and would not receive – any PAS equipment orders. In 4Q04, UTSI only received \$67
26 million of PAS equipment orders. Thus, Lu and Sophie knew there would be a sharp decline in PAS
27 equipment revenues in 4Q04. Moreover, as UTSI reported on 1/6/05, China Netcom was delaying
28 executing contracts and would not provide final acceptance and pay UTSI for existing orders that

1 would delay recognition of \$135 million of revenue until 2005. CW21 said that China Netcom was
2 typically very slow in paying UTSI and during UTSI's 5/5/05 conference call, Lu and Sophie
3 admitted that the Chinese government mandated *in 2004* that China Telecom and China Netcom
4 begin waiting six months following final acceptance before making future payments for PAS
5 infrastructure.

6 314. **Effect on Stock Price:** Investors again reacted with alarm to the substantially revised
7 guidance, the significant decline in PAS growth in China and the sharply reduced gross margins
8 resulting from the previously undisclosed problems as those disclosures called into question many of
9 the prior statements by Lu and Sophie regarding the strength of UTSI's business in China, its
10 international business and what UTSI's future results would be. On 9/20/04, UTSI's stock price
11 declined 10% to \$13.71 on volume of more than 25 million shares. By comparison, the PPG
12 declined 1.5% and the NASDAQ declined 0.1%.

13 315. **Loss Causation/Date of Loss:** Class members were damaged by the false and
14 misleading statements made on 9/20/04 when the price of the stock declined after some of UTSI's
15 true financial condition was revealed. The stock price declined after (1) UTSI lowered 4Q04
16 revenue, gross margin and EPS guidance on 1/6/05, (2) UTSI reduced PAS equipment and PAS
17 handset revenue guidance on 5/5/05, (3) UTSI reported on 8/2/05 that 2Q05 results were less than
18 guidance, that 3Q05 revenues would decline and that 3Q05 EPS would be a negative \$0.35-\$0.40,
19 (4) UTSI reported on 10/6/05 that 3Q05 revenues would be less than guidance, that the Company
20 might need to record a goodwill impairment charge and that the Company had received a formal
21 inquiry from the SEC, (5) UTSI reported on 2/9/06 that it had improperly recognized \$22 million of
22 revenue between 2003 and 2005, (6) UTSI reported on 3/16/06 that there would be a delay in filing
23 the 2005 Form 10-K because the Audit Committee needed more time to investigate revenues that
24 were improperly recorded, (7) the CFRA reported on 9/21/06 that UTSI might have stock option
25 backdating issues, (8) UTSI reported on 11/7/06 that it was investigating stock options, (9) UTSI
26 reported on 1/4/07 that two stock options had been backdated, (10) UTSI reported on 2/1/07 that it
27 would have to restate its financial statements because it failed to account for stock options in
28

accordance with APB 25, and (11) UTSI revealed on 7/24/07 and 10/10/07 that FY04 and FY05 results would be restated.

316. **Nature of Loss:** Class members purchased UTSI stock after 9/20/04 at artificially inflated prices because the market did not know that (1) the significant internal control weaknesses caused UTSI to report false financial results and would cause UTSI to report false results in the future, and (2) revenues, gross margins and EPS would decline significantly more than Lu and Sophie represented because of the operational problems, the reduction in PAS equipment orders, competition in the PAS handset market, the increasing costs of manufacturing the handsets, the undisclosed problems with the development of the ASICs and CDMA handsets, and the undisclosed problems with the quality of UTSI's broadband equipment. These conditions would be gradually revealed on the dates listed above.

317. **Date of Statements and Statements:** On 10/26/04, UTSI issued a press release and held a conference call to announce UTSI's 3Q04 results. In the press release and during the conference call, Lu and Sophie provided the following guidance:

Revenue Range:	4Q04:	\$875-\$885 million*
	FY04:	\$2.8 billion*
	FY05:	\$4 billion*
Gross Margins:	4Q04:	17% (core company 22%, ACC 4.5%)
	FY04:	22%
	FY05:	25%
GAAP EPS Range:	4Q04:	break-even
	FY04:	\$0.76-\$0.80
	FY05:	\$2

(*includes anticipated revenue of \$250 million + in Q4 and full-year 2004 and \$900 million in 2005 related to the acquisition of Audiovox Communications Corporation)

During the conference call, Sophie told investors that defendants were confident with their financial guidance for 2005 due to the visibility provided by the Company's backlog:

Sophie: Since our mid quarter update call, we've had more time to analyze our backlog, as well as revenue opportunity from the contracts currently in discussion. ***This has given us more visibility into next year, and we continue to remain confident with a revenue guidance of 4 billion. . . .*** Breaking these revenues down by product types, ***PAS hand sets and infrastructure, 1.5 to 1.6 billion***; CDMA handsets, 900 million to a billion; ***broadband, which included our IP-DSLAMS, MSTP, [GEAPON] and CPE 1.2 to 1.3 billion***; and non-PAS wireless which would be probably like TDCMA and CDMA, approximately 300 million.

1 Lu and Sophie again stated that the introduction of CDMA handsets would improve UTSI's gross
2 margins:

3 Sophie: *We expect to drive improvements in the Audiovox gross margins by*
4 *introducing our own design[ed] and manufactured handsets into the channel*
throughout 2005. . . .

5 * * *

6 Lu: [O]ut of \$900 million that we've projected from Audiovox that we are hoping
7 *UTStarcom will be able to contribute about 200-300 million dollars of the revenues*
8 *from UTStarcom's handset.* So we'll hope in the latter part of Q1 or Q2 we will be
able to start shipping some of our products to them.

9 During the conference call, Lu and Sophie stated that 3Q04 was a landmark quarter because UTSI
10 had booked \$600 million of international contracts, including the Japan Telecom contract:

11 Lu: *As of September 30th, we have [] booked more than \$600 million in contract*
12 *outside of China for the year. This was the landmark quarter with numbers of*
13 *substantial deals signing [] new product areas for UTStarcom.* These details form a
foundation for the additional contract with these contracts as well as new contracts
with other leading carriers in those and other geographics. . . .

14 *We announced contract with [] Japan Telecom for our IAN 8000 broadband*
15 *access platforms and with [] Softbank for [both the] NetRing multi services optical*
16 *transport solutions and our first gigabit IPON win. The combined value of these*
17 *contracts is approximately \$370 million.*

18 * * *

19 Sophie: In the third quarter, we announced nearly *\$400 million of contracts. These*
20 *bookings are indicative of the tremendous amount of demand [we're] seeing*
21 *globally, and contribute to our visibility for 2005.*

22 Lu assured investors there was still strong consumer demand for PAS in China:

23 Lu: Our third key challenge is to implement cost reduction program and gross margin
24 improvement in the China market. As we discussed in our mid quarter conference
25 call, *China Telecom and China Netcom continue to see strong consumer demand*
26 *for PAS.*

27 318. **Identity of Authors:** The press release was issued on behalf of UTSI and the
28 statements are attributable to Lu and Sophie because Lu was quoted in the press release and because
the statements were repeated during the conference call that Lu and Sophie attended. Lu and Sophie
made the statements during the conference call.

319. **True Facts:** UTSI did not report 4Q04, FY04 or FY05 financial results in line with
guidance:

Period	10/26/04 Guidance	Originally Reported	6/1/06 Restatement	10/10/07 Restatement
4Q04 Revenues	\$875-\$885 million	\$746.6 million	\$748.1 million	N/R
4Q04 Gross Margin	17%	15%	14.9%	N/R
4Q04 EPS	break-even	(\$0.22)	(\$0.27)	N/R
FY04 Revenues	\$2.8 billion	\$2.7 billion	\$2.68 billion	\$2.58 billion
FY04 Gross Margin	22%	22.3%	22.2%	22.1%
FY04 EPS	\$0.76-\$0.80	\$0.64	\$0.61	\$0.45
FY05 Revenues	\$4 billion	\$2.93 billion	N/A	\$2.87 billion
FY05 PAS & PHS Revenues	\$1.5-\$1.6 billion	\$968 million	N/A	\$909.5 million
FY05 Broadband Revenues	\$1.2-\$1.3 billion	\$507.7 million	N/A	\$449 million
FY05 Gross Margin	25%	15.8%	N/A	15.2%
FY05 EPS	\$2.00	(\$4.16)	N/A	(\$4.55)

320. The failure to report results in line with guidance shows that (1) the backlog did not give Lu and Sophie more visibility into 2005, (2) UTSI did not improve Audiovox gross margins by introducing internally designed handsets in 2005, (3) the booking of \$600 million of broadband contracts outside China was not indicative of tremendous demand for UTSI's products and (4) there was not strong consumer demand for PAS in China.

321. **Scienter and Factual Basis for Scienter: Lu and Sophie knew the undisclosed and widespread problems prevented them from providing accurate guidance:** Lu and Sophie continued to know there was no reasonable basis for their statements because they knew (1) China Telecom and China Netcom were substantially reducing orders for PAS equipment, (2) gross margins on PAS equipment sales were declining due to the reduced demand and aggressive pricing, (3) revenues and gross margins on PAS handset sales had declined and would continue to decline due to competition, increased costs of component parts purchased from Toshiba and the problems with the development of the ASIC PAS handsets and the CDMA handsets, (4) revenues and gross margins on PAS equipment sales and broadband equipment sales were being negatively impacted by the undisclosed operational problems that were delaying revenue recognition and increasing the costs of the backlogged sales. In addition, Lu and Sophie knew there were significant internal control weaknesses that precluded them from knowing if (1) UTSI was properly recognizing revenue

1 on sales with side agreements supplementing or amending contract terms, (2) UTSI was properly
2 accounting for stock compensation expenses and (3) UTSI was obtaining sales by bribing foreign
3 government officials in violation of the FCPA.

4 322. That UTSI reported FY04 revenue and EPS that were substantially less than the
5 guidance provided on 10/26/04, and then restated and reduced FY04 revenues and EPS twice
6 confirms there was no reasonable basis for the guidance, and raises a strong inference Lu and Sophie
7 knew it. Further, the failure of UTSI to originally report FY05 revenues and EPS in line with the
8 guidance, and then restating and reducing FY05 revenues and EPS confirm there was no reasonable
9 basis for the guidance and raise a strong inference Lu and Sophie knew it.

10 323. UTSI reported \$2.93 billion of revenue in 2005 that was subsequently restated and
11 reduced to \$2.87 billion. The \$2.87 billion was \$1.13 billion or 28% less than the \$4 billion Lu and
12 Sophie told investors they were confident UTSI would report. PAS equipment and handset revenues
13 were \$909 million, not \$1.5-\$1.6 billion, and broadband revenues were \$508 million, not \$1.2-\$1.3
14 billion. The magnitude of the misses bolsters the inference Lu and Sophie knew there was no
15 reasonable basis for these representations.

16 324. UTSI reported 4Q04 revenues of \$742 million, which was \$133-\$143 million or 15%
17 less than the \$875-\$885 million guidance. On 1/6/05, Lu and Sophie reported the shortfall was
18 caused by delays in the execution of contracts and final acceptances on a PAS equipment contract in
19 China, which Lu and Sophie knew were long-standing problems at the Company. Indeed, on 5/5/05,
20 they would acknowledge that the Chinese government mandated *in 2004* that China Telecom and
21 China Netcom wait six months following final acceptance to make payments for PAS infrastructure.

22 325. **Lu and Sophie knew consumer demand for PAS was not strong because PAS**
23 **equipment orders and PAS subscriber growth rates were continuing to decline:** By 10/26/04,
24 Lu and Sophie knew UTSI did not receive any PAS equipment orders in 3Q04. UTSI received just
25 \$67 million of orders in 4Q04. Further, the decline in PAS subscriber growth rates continued,
26 declining from 17% in 2Q04 to 11% in 3Q04. After reporting \$428 million of PAS equipment
27 revenues in 2Q04 and \$426 million of PAS equipment revenues in 3Q04, UTSI's PAS equipment
28 revenues plummeted to \$206 million in 4Q04 and to \$110 million in 1Q05. UTSI originally

1 reported just \$495 million of PAS equipment revenues in 2005, which was restated and reduced to
2 \$473.3 million on 10/10/07. The substantial decline in PAS equipment orders and revenues, the
3 importance of China Telecom and China Netcom to the Company's financial results, the close
4 relationship between UTSI and its two largest customers, the decline in PAS subscriber growth rates
5 and the receipt of just \$67 million of orders in 4Q04, strongly infer Lu and Sophie knew that China
6 Telecom and China Netcom planned to substantially reduce PAS equipment orders in 4Q04, and that
7 consumer demand for PAS was not strong.

8 326. **Lu and Sophie knew that the \$600 million of international contracts booked in**
9 **1Q04-3Q04 was not indicative of tremendous demand, and that there was no reasonable basis**
10 **to represent broadband revenues would be \$1.2-\$1.3 billion in 2005:** The reporting of \$508
11 million of broadband revenues in 2005 compared to the guidance of \$1.2-\$1.3 billion, and
12 information provided by the witnesses and the Company's lawsuit against Passave show that Lu and
13 Sophie knew the \$600 million of international contracts booked in 1Q04-3Q04 was not indicative of
14 tremendous demand, and that there was no reasonable basis to represent broadband revenues would
15 be \$1.2-\$1.3 billion in 2005. In the Passave lawsuit, UTSI alleged that SBBC had notified UTSI *by*
16 *10/04* that there were problems with the GEPON product shipped to SBBC in 7/04. CW3 said Japan
17 Telecom insisted it approve all equipment before it was accepted for deployment because UTSI had
18 delivered poor quality products to SOFTBANK affiliates in the past, and CW8 said there were
19 significant quality issues with the iAN-8000 MSAN equipment delivered to Japan Telecom. As a
20 result, Japan Telecom required contract terms (no acceptance until goods inspected and approved,
21 damages for delivery delays, right to impose quality assurance standards on UTSI, requirement for
22 UTSI to perform sales promotional activities) that made the transaction a risk-free deal for Japan
23 Telecom. CW6, CW9, CW16 and CW19 said there were problems with the mVision IPTV product,
24 and CW13 said there were problems with the NetRing product sold to Japan Telecom in late 2004.
25 The disclosure by UTSI on 10/26/04 that \$28 million of revenue from the sale of UTSI's mVision
26 IPTV products would be recognized in 2005 rather than 4Q04 also shows Lu and Sophie knew about
27 the product problems.

1 **327. Lu and Sophie knew delays in the introduction of internally designed CDMA**
 2 **handsets would prevent improvements in Audiovox gross margins in 2005:** The problems with
 3 the development of the CDMA handsets show that Lu and Sophie knew their introduction would be
 4 delayed, and therefore would not improve UTSI's gross margins in 2005. In subsequent conference
 5 calls, Lu and Sophie acknowledged the introduction of the handsets would be delayed. After
 6 reporting a 4.7% gross margin on sales of all cellular handsets in 4Q04, UTSI reported lower
 7 margins in 2005 – 4.3% in 1Q05, 4.7% in 2Q05, 3.6% in 3Q05 and 2.9% in 4Q05. On 11/3/05 and
 8 2/9/06, defendants stated that product returns and increased warranty reserves contributed to the
 9 decline.

10 **328. Lu and Sophie knew significant internal control weaknesses related to goodwill**
 11 **prevented them from providing accurate guidance:** Lu and Sophie knew that UTSI reported
 12 \$180.6 million of goodwill in 4Q04, and that UTSI did not have the ability to determine if goodwill
 13 was impaired, which in turn prevented them providing accurate guidance. This significant internal
 14 control weakness was acknowledged in the Company's 2004 Form 10-K filed on 4/15/05, and UTSI
 15 recorded \$323 million of impairment charges to write off 100% of the Company's goodwill on
 16 11/3/05 for reasons that existed in 4Q04.

17 **329. Effect on Stock Price:** On 10/27/04, UTSI's stock price increased 0.7%, which was
 18 similar to the 0.9% increase in the PPG and less than the 2.1% increase in the NASDAQ.

19 **330. Loss Causation/Date of Loss:** Class members were damaged by the false and
 20 misleading statements made on 10/26/04 when the price of the stock declined after some of UTSI's
 21 true financial condition was revealed. The stock price declined after (1) UTSI lowered 4Q04
 22 revenue, gross margin and EPS guidance on 1/6/05, (2) UTSI reduced PAS equipment and PAS
 23 handset revenue guidance on 5/5/05, (3) UTSI reported on 8/2/05 that 2Q05 results were less than
 24 guidance, that 3Q05 revenues would decline and that 3Q05 EPS would be a negative \$0.35-\$0.40,
 25 (4) UTSI reported on 10/6/05 that 3Q05 revenues would be less than guidance, that the Company
 26 might need to record a goodwill impairment charge and that the Company had received a formal
 27 inquiry from the SEC, (5) UTSI reported on 2/9/06 that it had improperly recognized \$22 million of
 28 revenue between 2003 and 2005, (6) UTSI reported on 3/16/06 that there would be a delay in filing

1 the 2005 Form 10-K because the Audit Committee needed more time to investigate revenues that
2 were improperly recorded, (7) the CFRA reported on 9/21/06 that UTSI might have stock option
3 backdating issues, (8) UTSI reported on 11/7/06 that it was investigating stock options, (9) UTSI
4 reported on 1/4/07 that two stock options had been backdated, (10) UTSI reported on 2/1/07 that it
5 would have to restate its financial statements because it failed to account for stock options in
6 accordance with APB 25, and (11) UTSI revealed on 7/24/07 and 10/10/07 that FY04 and FY05
7 results would be restated.

8 331. **Nature of Loss:** Class members purchased UTSI stock after 10/26/04 at artificially
9 inflated prices because the market did not know that (1) the significant internal control weaknesses
10 caused UTSI to report false financial results and would cause UTSI to report false results in the
11 future, and (2) revenues, gross margins and EPS would decline significantly because of the
12 operational problems, the reduction in PAS equipment orders, competition in the PAS handset
13 market, the increasing costs of manufacturing the handsets, the undisclosed problems with the
14 development of the ASICs and CDMA handsets, and the undisclosed problems with the quality of
15 UTSI's broadband equipment. These conditions would be gradually revealed on the dates listed
16 above.

17 3. False and Misleading Statements in 2005

18 332. On 1/6/05, UTSI issued a press release and held a conference call to announce that
19 4Q04 revenues would be \$740-\$745 million or \$135 million less than the \$875-\$885 million Lu and
20 Sophie told investors to expect on 10/26/04. It was stated in the press release that "[t]he primary
21 reason behind the lower than expected financial results was the challenging market environment that
22 UTStarcom faced in [China]," "revenues from China operations were adversely impacted by several
23 factors, including an overall slowing of the Chinese economy, maturation of the PAS market, and
24 decreased capital spending," and "there were disruptions associated with changes in senior
25 management at the main carriers in China, and the shift of decision-making away from regional
26 entities and towards carrier headquarters, which caused delays in both the execution of contracts and
27 final acceptances."
28

333. **Date of Statements and Statements:** During the 1/6/05 conference call, Sophie reiterated the FY05 revenue guidance, and Lu said UTSI was experiencing strong international demand:

Sophie: *We remain confident in our full year 2005 revenue guidance, which we have targeted at 4 billion*, representing approximately 50 percent annual growth over 2004. . . .

* * *

Lu: *UTStarcom is experiencing strong demands in our international market[s] such as Japan, India, the US, and Latin America.* We are pleased that international business is on track this quarter and is showing momentum as we move into 2005.

In Q4, we announced the number of important contract wins that support our vision of globalization and diversification. Selected transactions included our first contract for our mVision TV over IP solution and mSwitch with a US-based CLEC DSSI.

334. **Identity of Authors:** Lu and Sophie made the statements during the conference call.

335. **True Facts:** UTSI did not report \$4 billion of revenues in 2005. It originally reported \$2.9 billion, which was restated and reduced to \$2.87 billion on 10/10/07. The various product problems described by the witnesses and confirmed by the Company's lawsuit against Passave establish that UTSI was not experiencing strong demand in its international markets.

336. **Scienter and Factual Basis for Scienter: Lu and Sophie knew there was no reasonable basis to reiterate the \$4 billion revenue guidance for 2005:** The magnitude of the revenue shortfall in 2005, the witness accounts, the allegations in the Passave lawsuit, the continuing substantial decline in PAS equipment orders, PAS equipment revenues and PAS handset revenues and the significant internal control weaknesses raise a strong inference Lu and Sophie knew there was no reasonable basis for the guidance.

337. **Magnitude of Revenue Shortfall:** UTSI originally reported \$2.93 billion of revenue in 2005, which was subsequently restated and reduced to \$2.87 billion – \$1.13 billion less than the \$4 billion guidance. The Company reported \$909.5 million of PAS equipment and handset revenue in 2005, which was \$690 million or 43% less than the \$1.5-\$1.6 billion guidance provided on 10/26/04 and reiterated on 1/6/05. UTSI reported \$508 million of broadband revenues in 2005, which was \$800 million or 62% less than the \$1.3 billion guidance provided on 10/26/04 and

1 reiterated on 1/6/05. The magnitude of the shortfalls confirms there was no reasonable basis for the
2 guidance, and raises a strong inference Lu and Sophie knew it.

3 338. **Lu and Sophie knew PAS equipment revenues and PAS handset revenues would**
4 **decline in 2005:** Lu and Sophie knew PAS equipment revenues would decline substantially in 2005
5 (as they did in 4Q04) because China Telecom and China Netcom had substantially reduced their
6 PAS equipment orders throughout 2003 and 2004, including no orders in 3Q04 and just \$67 million
7 of orders in 4Q04. China Telecom and China Netcom ordered \$160 million in 1Q05, \$70 million in
8 2Q05, \$167 million in 3Q05 and \$42 million in 4Q05.

9 339. **Lu and Sophie knew there was not strong international demand:** Lu and Sophie
10 misled investors by stating important contract wins announced in 4Q04 supported their contentions
11 that there was strong international demand for their products, and by reiterating 2005 revenues
12 would be \$4 billion, knowing that guidance assumed \$1.2-\$1.3 billion of broadband revenues. The
13 reporting of \$508 million broadband revenues in 2005, the information provided by the witnesses
14 and the Company's admissions of product problems in 2005 show why Lu and Sophie knew there
15 was no reasonable basis for their statements. Information provided by CW13 and the Company's
16 lawsuit against Passave establish Lu and Sophie knew there were problems with the GEPON product
17 shipped to SBBC in 7/04. Indeed, UTSI alleged in the Passave lawsuit that SBBC notified UTSI in
18 10/04 that the product did not work and that in 1/05, UTSI had determined the problem was a failure
19 of the Passave chip to interface properly with a Broadcom Corporation ("Broadcom") switching
20 device that operated within the FTTH products. Specifically, the Passave chip was erroneously
21 interpreting some of the data received through the ten-bit interface from the Broadcom switch as
22 illegal and, therefore, dropped the data causing failures.

23 340. Lu and Sophie also knew there were problems with the iAN-8000 equipment sold to
24 Japan Telecom that led to Japan Telcom insisting on contract terms that, among other things,
25 allowed them to inspect the equipment before accepting delivery, and to impose additional quality
26 assurance standards on UTSI. Moreover, Japan Telecom would only purchase the equipment if
27 UTSI increased Japan Telecom's customers through sales promotion activities for which UTSI
28 received no additional consideration.

1 341. CW6, CW9 and CW16 stated there were problems with the mVision equipment sold
2 to DSSI in 11/04 that CW16 said were never resolved. According to CW6, DSSI was never
3 comfortable with the performance of the mVision equipment and refused to pay for it. CW6 stated
4 that DSSI planned to offer TVoIP services to multi-dwelling end users in northern Alabama but the
5 IPTV picture was jittery and unclear. Prior to resigning in 10/05, CW6 said that DSSI returned all of
6 the mSwitch equipment that was also part of the transaction and demanded that UTSI “completely
7 redo the mSwitch.” CW6 said that UTSI experienced similar problems with the mVision equipment
8 sold to SOFTBANK.

9 342. CW9 also said UTSI delivered defective mSwitch and mVision equipment that DSSI
10 intended to use to offer IPTV services to residential and commercial customers. CW9 said UTSI
11 was never able to get the mSwitch to work. For example, CW9 said the UTSI mSwitch was unable
12 to offer “centrex features” which would allow incoming calls to ring at every receptionist’s desk at
13 DSSI’s commercial customers and allow DSSI to offer conference capabilities, extensions on one
14 line and other features. CW9 said the mSwitch used “direct current” rather than “alternating
15 current” because the alternating current switch was not rated in the United States. The DC switch
16 only worked 95% which was unacceptable. In mid-2005, CW9 said DSSI returned the servers and
17 blades for the mSwitch to UTSI so an upgraded version of software could be installed.

18 343. CW9 said there were numerous problems with the mVision TVoIP equipment
19 including language translation issues, problems with the menu prompt and “lip synch” issues that
20 resulted in a long lag between the picture and sound. CW9 said UTSI engineers, including Frank
21 Kao, spent thousands of hours at DSSI trying to get mVision to work properly and that defendant Lu
22 and DSSI executives traveled to China to meet with the UTSI development team to try and resolve
23 the problems. But according to CW9, the mVision equipment never worked properly and DSSI had
24 not paid for the equipment by 9/05 when CW9 left DSSI.

25 344. CW16 said that UTSI’s efforts to deliver IPTV to DSSI were horribly mismanaged
26 and caused the Company to ultimately lose the deal. CW16 was assigned to the DSSI account in
27 2005 because DSSI had become increasingly upset with UTSI’s inability to deliver a quality
28 mVision system. The problems were never resolved, DSSI refused to pay \$3 million for the

1 equipment that was installed and as a result, UTSI began to repossess the equipment in 6/07. CW16
2 said there were two main issues that prevented UTSI from delivering IPTV to DSSI. First, CW16
3 said that UTSI's R&D engineers in China often claimed the system components were working when
4 they were not working. Second, CW16 said that the R&D engineers in China were unwilling to
5 make modifications to component parts that were required for the parts to function effectively in
6 DSSI's network. For example, CW16 said that when the mVision system components
7 malfunctioned or required modification to work properly in DSSI's network, the R&D engineers in
8 China claimed they had other priorities and would not repair or modify the components.

9 345. **Lu and Sophie knew the significant internal control weaknesses prevented them**
10 **from providing accurate guidance:** Lu and Sophie knew there was no reasonable basis for their
11 guidance because they knew UTSI was recognizing revenue without sufficient controls in place to
12 ensure there were not side letters amending or supplementing contract terms that precluded revenue
13 recognition, and because they knew UTSI did not have sufficient controls in place to assure stock
14 compensation expenses were being recorded in accordance with GAAP. Lu and Sophie had been on
15 notice from the Company's auditors since 3/03 that there were significant internal control
16 weaknesses, including the need to "strengthen procedures to ensure side letters and contract
17 amendments are communicated and accounted for in a timely manner," received a second
18 Management Recommendation letter from PWC in 4/04, that again noted concerns about the use of
19 side letters that were not forwarded to the finance department, and received a third Management
20 Recommendation letter from PWC in 2005 in connection with the 2004 audit. The fact that UTSI
21 restated and reduced revenues and EPS in FY05, and that Lu and Sophie knew about the significant
22 internal control weaknesses strengthens the inference they knew there was no reasonable basis for
23 the guidance.

24 346. The significant internal control weaknesses at UTSI, the investigations by the
25 Company, the SEC and the DOJ into whether the Company obtained sales by bribing foreign
26 government officials in violation of the FCPA, and the unwinding of the Mongolian joint venture
27 transaction strongly infer that UTSI did obtain sales by bribing foreign government officials in
28

1 violation of the FCPA, and that Lu and Sophie knew these undisclosed problems also prevented
2 them from providing accurate guidance.

3 347. **Effect on Stock Price:** On 1/7/05, UTSI's stock price declined 20% from \$19.94 to
4 \$15.97 compared to a 0.8% increase in the PPG and a 0.1% decline in the NASDAQ. Because the
5 1/6/05 disclosures revealed additional problems with the China PAS market – including reduced
6 capital expenditures by China Telecom and China Netcom and their refusal to provide final
7 acceptance and pay UTSI \$135 million – that had previously been concealed, the decline in UTSI's
8 stock price that resulted from these disclosures provides a measurement of the economic damages
9 that were caused by the false and misleading statements before 1/6/05.

10 348. **Loss Causation/Date of Loss:** Class members were damaged by the false and
11 misleading statements made on 1/6/05 when the price of the stock declined after some of UTSI's
12 true financial condition was revealed. The stock price declined after (1) UTSI reduced PAS
13 equipment and PAS handset revenue guidance on 5/5/05, (2) UTSI reported on 8/2/05 that 2Q05
14 results were less than guidance, that 3Q05 revenues would decline and that 3Q05 EPS would be a
15 negative \$0.35-\$0.40, (3) UTSI reported on 10/6/05 that 3Q05 revenues would be less than
16 guidance, that the Company might need to record a goodwill impairment charge and that the
17 Company had received a formal inquiry from the SEC, (4) UTSI reported on 2/9/06 that it had
18 improperly recognized \$22 million of revenue between 2003 and 2005, (5) UTSI reported on 3/16/06
19 that there would be a delay in filing the 2005 Form 10-K because the Audit Committee needed more
20 time to investigate revenues that were improperly recorded, (6) the CFRA reported on 9/21/06 that
21 UTSI might have stock option backdating issues, (7) UTSI reported on 11/7/06 that it was
22 investigating stock options, (8) UTSI reported on 1/4/07 that two stock options had been backdated,
23 (9) UTSI reported on 2/1/07 that it would have to restate its financial statements because it failed to
24 account for stock options in accordance with APB 25, and (10) UTSI revealed on 7/23/07 and
25 10/10/07 that FY05 results would be restated.

26 349. **Nature of Loss:** Class members purchased UTSI stock at artificially inflated prices
27 after 1/6/05 because the market did not know that (1) the significant internal control weaknesses
28 caused UTSI to report false financial results and would cause UTSI to report false results in the

future, and (2) revenues, gross margins and EPS would decline significantly because of the operational problems, the reduction in PAS equipment orders, competition in the PAS handset market, the increasing costs of manufacturing the handsets, the undisclosed problems with the development of the ASICs and CDMA handsets, and the undisclosed problems with the quality of UTSI's broadband equipment. If investors had known of these conditions, they would have lowered their expectations about the Company's current and future prospects, which would have caused the stock price to decline as it did on the dates listed above.

350. On 5/5/05, UTSI issued a press release and held a conference call to announce 1Q05 results. But UTSI also disclosed (1) a massive restructuring that would result in a 17% or 1,400 person reduction in force, (2) China PAS revenues in 2005 would be 40%-50% lower than the \$2.1 billion reported in 2004, rather than 30% lower as represented on 9/20/04, 10/26/04 and 1/6/05, (3) PAS handset and PCD gross margins had declined, (4) delays in the design and qualification process of UTSI's CDMA handsets would cause shipment volumes to decline, and (5) the introduction of the ASIC PAS handset would be delayed to 3Q05.

351. **Date of Statements and Statements:** In the 5/5/05 press release, the following guidance for 2Q05 was provided:

Consolidated Second Quarter 2005 Guidance

Total Revenues:	Approximately \$740 million
Gross Profit Margins:	15-18%

* * *

GAAP EPS:	Loss of Approximately (\$0.70-\$0.80), inclusive of non-cash tax and restructuring charges
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352. **Identity of Authors:** The press release was issued on behalf of UTSI and the statements are also attributable to Lu and Sophie who were quoted in the press release.

353. **True Facts:** UTSI did not report 2Q05 revenues and gross margins in line with guidance:

	<u>5/5/05 Guidance</u>	<u>8/2/05 Results</u>	<u>6/1/06 Restatement</u>	<u>10/10/07 Restatement</u>
Revenues	approx. \$740 million	\$723.0 million	\$179.8 million	\$700.5 million
Gross Margin	15%-18%	15%	15.6%	14.7%
GAAP EPS	(\$0.70-\$0.80)	(\$0.65)	(\$0.64)	(\$0.75)

GAAP EPS in 2Q05 was still overstated because UTSI failed to write off goodwill.

354. **Scienter and Factual Basis for Scienter:** Lu and Sophie also knew there was no reasonable basis for the guidance provided on 5/5/05 due to the undisclosed product problems that delayed revenue recognition and increased the cost of backlogged sales, and the significant internal control weaknesses that caused UTSI to improperly recognize revenue, understate stock compensation expenses and fail to record goodwill impairment charges.

355. **Continuation of Product Quality Problems:** The witness accounts and the Company's lawsuit against Passave raise a strong inference Lu and Sophie knew there was no reasonable basis for the 2Q05 guidance because of the numerous problems with the Company's broadband products. The GEON product shipped to SBBC in 7/04 did not work, and UTSI determined in 1/05 that the problem was caused by defective Passave chips. These problems continued and eventually led to SBBC demanding the defective chips be replaced in 8/05. The mVision equipment sold to DSSI in 11/04 did not work and DSSI refused to pay for it. The NetRing product sold to Japan Telecom in 2004 did not function properly and the problems had not been fixed by 5/06.

356. **Lu and Sophie knew the significant internal control weaknesses prevented them from providing accurate guidance:** Lu and Sophie knew there was no reasonable basis for their guidance because they knew UTSI was recognizing revenue without sufficient controls in place to ensure there were not side letters amending or supplementing contract terms that precluded revenue recognition, and because they knew UTSI did not have sufficient controls in place to assure stock compensation expenses were being recorded in accordance with GAAP. Lu and Sophie had been on notice from the Company's auditors since 3/03 that there were significant internal control deficiencies, including the need to "strengthen procedures to ensure side letters and contract amendments are communicated and accounted for in a timely manner," received a second

1 Management Recommendation letter from PWC in 4/04, that again noted concerns about the use of
2 side letters that were not forwarded to the finance department, and received a third Management
3 Recommendation letter from PWC in 2005 in connection with the 2004 audit. The fact that UTSI
4 restated and reduced revenues, gross margins and EPS for 2Q05, and that Lu and Sophie knew about
5 the significant internal control deficiencies strengthens the inference they knew there was no
6 reasonable basis for the guidance.

7 357. In addition, by 5/5/05, Lu and Sophie knew there was no reasonable basis for the
8 guidance because they knew there were significant internal control weaknesses related to goodwill
9 that prevented the Company from identifying instances of goodwill impairment. Indeed, UTSI
10 disclosed this problem in the 2004 Form 10-K filed on 4/15/05, and then recorded a \$323 million
11 impairment charge in 3Q05.

12 358. The significant internal control weaknesses at UTSI, the investigations by the
13 Company, the SEC and the DOJ into whether the Company obtained sales by bribing foreign
14 government officials in violation of the FCPA, and the unwinding of the Mongolian joint venture
15 transaction strongly infer that UTSI did obtain sales by bribing foreign government officials in
16 violation of the FCPA, and that Lu and Sophie knew these undisclosed problems also prevented
17 them from providing accurate guidance.

18 359. **Effect on Stock Price:** On 5/6/05, UTSI's stock price declined 31% to \$7.24
19 compared to a 1% decline in the PPG and a 0.3% increase in the NASDAQ. Because the 5/5/05
20 disclosures revealed additional problems that had been previously concealed, including the impact of
21 the matured PAS market on UTSI's future results and the continued decline in PAS revenues and
22 gross margins, the decline in UTSI's stock price provides a measure of the economic damages that
23 were caused by the false and misleading statements before 5/5/05.

24 360. **Loss Causation/Date of Loss:** Class members were damaged by the false and
25 misleading statements made on 5/5/05 when the price of the stock declined after some of UTSI's
26 true financial condition was revealed. The stock price declined after (1) UTSI reported on 8/2/05
27 that 2Q05 results were less than 5/5/05 guidance, that 3Q05 revenues would decline and that 3Q05
28 EPS would be a negative \$0.35-\$0.40, (2) UTSI reported on 2/9/06 that it had improperly recognized

1 \$22 million of revenue between 2003 and 2005, (3) UTSI reported on 3/16/06 that there would be a
 2 delay in filing the 2005 Form 10-K because the Audit Committee needed more time to investigate
 3 revenues that were improperly recorded, (4) the CFRA reported on 9/21/06 that UTSI might have
 4 stock option backdating issues, (5) UTSI reported on 11/7/06 that it was investigating stock options,
 5 (6) UTSI reported on 1/4/07 that two stock options had been backdated, (7) UTSI reported on 2/1/07
 6 that it would have to restate its financial statements because it failed to account for stock options in
 7 accordance with APB 25, and (8) UTSI revealed on 7/23/07 and 10/10/07 that 2Q05 results would be
 8 restated.

9 **361. Nature of Loss:** Class members purchased UTSI stock at artificially inflated prices
 10 after 5/5/05 because the market did not know that (1) the significant internal control weaknesses
 11 caused UTSI to report false financial results and would cause UTSI to report false results in the
 12 future, and (2) revenues, gross margins and EPS would decline because of the operational problems,
 13 the reduction in PAS equipment orders, competition in the PAS handset market, the increasing costs
 14 of manufacturing the handsets, the partially disclosed problems with the development of the ASICs
 15 and CDMA handsets, and the undisclosed problems with the quality of UTSI's broadband
 16 equipment. These conditions would be gradually revealed on the dates listed above.

17 **362. Date of Statements and Statements:** On 8/2/05, UTSI issued a press release and
 18 held a conference call to announce 2Q05 results, including revenues below the guidance provided on
 19 5/5/05 due to weak PAS and broadband revenues. In the press release and during the conference
 20 call, Lu and Sophie provided guidance for 3Q05 as follows:

21 Consolidated Third Quarter 2005 Guidance

22 Total Revenues	Approximately \$660-\$680 million
23 Gross Profit Margins	Total Company: 15%-18%
	Not Including PCD: 30%-32%
24 Restructuring Charges	Approximately \$5-\$10 million
25 GAAP EPS	Loss of Approximately (\$0.35-\$0.40), inclusive of restructuring charges

26 During the 8/2/05 conference call, Lu also stated that UTSI's new broadband products – particularly
 27 the mVision IPTV product – were being well received:

28 Lu: ***Our new products are [being] well received by carriers globally.*** We have []
 deploy[ed] our mVision IP TV platform with [Softbank] broadband in Japan to

support their new BBTB service *Our IP TV deployments with the [Softbank] BB demonstrate that success of UTStarcom's strategy* of the working with our customer to build the comprehensive platform of a scalable solution to ensure their long-term growth.

Following Softbank's footsteps, *DSSI, a CLEC serving communities in the southern, eastern United States is scheduled to [] launch the commercial IP TV and triple play services later this summer.*

363. **Identity of Authors:** The press release was issued on behalf of UTSI and the statements are attributable to Lu and Sophie who were quoted in the press release. Lu made the statements during the conference call that Sophie also attended.

364. **True Facts:** UTSI did not report 3Q05 results in line with guidance:

	<u>8/2/05 Guidance</u>	<u>Reported</u>	<u>6/1/06 Restatement</u>	<u>10/10/07 Restatement</u>
Revenues	\$660-\$680 million	\$635.3 million	\$632.0 million	\$597.4 million
Gross Margin	15%-18%	8.5%	8.4%	6.3%
GAAP EPS	(\$0.35-\$0.40)	(\$3.40)	(\$3.43)	(\$3.70)

365. The numerous problems with the Company's broadband products and the admissions on 10/6/05 that the revenue shortfall in 3Q05 was due to the delay in recognizing \$40 million of revenue on a contract with SBBC for the Company's mVision equipment establish that UTSI's products were not being well received.

366. **Scienter and Factual Basis for Scienter: Problems with mVision Product Sold to SBBC in 5/05, the SEC Suit Against Shey and Wells Notice to Lu:** The SEC's investigation of insider trading at UTSI and its suit against Chauncey Shey ("Shey"), a co-founder and former officer and director of UTSI, raise a strong inference Lu and Sophie knew *by 8/05* that there were problems with the mVision IPTV product sold to SBBC in 5/05, that would cause the Company to report disappointing results in 3Q05. On 12/22/06, the Company reported that Lu received a "Wells Notice" from the staff of the SEC on 12/18/06 in connection with an ongoing investigation into trading activities by third parties, that stated the staff intended to recommend to the SEC that it file a civil injunctive action alleging Lu violated §10(b) of the 1934 Act.

367. On 9/6/07, the SEC announced it had filed insider trading charges against Shey because he and his wife sold 600,000 shares of UTSI stock between 10/3/05 and 10/6/05 after Shey had several telephone conversations with a UTSI senior executive (with whom Shey had co-founded

1 the Company) on 10/1/05, during which he learned that UTSI was going to pre-announce it had
2 missed revenue and earnings guidance for the quarter. The SEC alleged that UTSI had included \$40
3 million of projected revenue from a 5/05 sale of IPTV network equipment in its financial guidance to
4 securities analysts for 3Q05, and that *by 8/05, performance problems with the IPTV network had*
5 *arisen, which resulted in the customer refusing to provide final acceptance.* By the end of 3Q05,
6 the UTSI executive knew that the \$40 million of revenue could not be recognized because the
7 problems were not fixed, and that UTSI planned to pre-announce disappointing 3Q05 results the
8 following week. She learned of the revenue shortfall during the telephone calls on 10/1/05.

9 368. She agreed to settle the lawsuit by disgorging \$420,226.60, the amount of losses
10 She avoided by selling the stock, and paying a civil penalty of \$420,226.60. The only plausible
11 inference from the above is that Lu and Sophie knew about the problems, and that Lu was the senior
12 UTSI executive that tipped off Shey so he could dump his stock.

13 369. **Lu and Sophie knew there were problems with other broadband products:**
14 Information provided by the witnesses and the Company's lawsuit against Passave show that Lu and
15 Sophie also knew the problems with the mVison product sold to DSSI in 2004 and the problems
16 with the GEPON products sold to SBBC were getting worse. According to UTSI lawsuit against
17 Passave, *by 7/05, UTSI learned of additional and more severe problems caused by the Passave*
18 *chip* – the defective chip was causing FTTH products to freeze entirely due to complete data
19 stoppages that were not recoverable, and SBBC was suffering epidemic-level freezing failures due to
20 Passave's chips. In 2H05, CW13 also knew that SBBC had informed UTSI that the chips in the
21 GEPON product were failing. As a result, and as UTSI alleged in the Passave suit, the Company
22 was forced to spend significant money, time and resources trying to find solutions for the problems,
23 but *by 8/05, SBBC demanded UTSI to replace the defective Passave chips.* Passave told UTSI that
24 it would not be able to provide chips that resolved the problems until mid-2006. CW13 also said the
25 defects required UTSI to replace all the GEPON chips in SBBC's FTTH network in 2006. Both
26 CW13 and the Company's lawsuit said replacing the defective chips cost more than \$30 million.

27 370. The information provided by CW6, CW9 and CW16 establishes that the mVision
28 equipment sold to DSSI in 11/04 was still not working in 8/05 and that DSSI had returned the

1 product and demanded UTSI fix it. CW6 said that DSSI returned all of the mSwitch equipment to
2 UTSI before CW6 resigned in 10/05 and demanded that UTSI “completely redo the mSwitch.”
3 CW9 said DSSI returned the servers and blades for the mSwitch to UTSI in mid-2005 so an
4 upgraded version of software could be installed. CW16 was assigned to the DSSI account in 2005
5 because DSSI had become increasingly upset with UTSI’s inability to deliver a quality mVision
6 system.

7 371. **Lu and Sophie knew the significant internal control weaknesses prevented them**
8 **from providing accurate guidance:** Lu and Sophie knew there was no reasonable basis for their
9 guidance because they knew (1) UTSI was recognizing revenue without sufficient controls in place
10 to ensure there were not side letters amending or supplementing contract terms that precluded
11 revenue recognition, and (2) UTSI did not have sufficient controls in place to assure stock
12 compensation expenses were being recorded in accordance with GAAP. Lu and Sophie had been on
13 notice from the Company’s auditors since 3/03 that there were significant internal control
14 deficiencies, including the need to ““strengthen procedures to ensure side letters and contract
15 amendments are communicated and accounted for in a timely manner,”” received a second
16 Management Recommendation letter from PWC in 4/04, that again noted concerns about the use of
17 side letters that were not forwarded to the finance department, and received a third Management
18 Recommendation letter from PWC in 2005 in connection with the 2004 audit. The fact that UTSI
19 restated and reduced revenues and EPS in FY05 and that Lu and Sophie knew about the significant
20 internal control deficiencies strengthens the inference they knew there was no reasonable basis for
21 the guidance.

22 372. Lu and Sophie also knew there was no reasonable basis for the guidance because they
23 knew there were significant internal control weaknesses related to goodwill that prevented the
24 Company from identifying instances of goodwill impairment. Indeed, UTSI disclosed this problem
25 in the 2004 Form 10-K filed on 4/15/05, revealed on 10/6/05 that the Company might have to record
26 a goodwill impairment charge and then recorded a \$323 million impairment charge in 3Q05, that
27 caused UTSI to report a loss per share of \$3.40 compared to the guidance of a loss per share of
28 \$0.35-\$0.40.

1 373. The significant internal control weaknesses at UTSI, the investigations by the
2 Company, the SEC and the DOJ into whether the Company obtained sales by bribing foreign
3 government officials in violation of the FCPA, and the unwinding of the Mongolian joint venture
4 transaction strongly infer that UTSI did obtain sales by bribing foreign government officials in
5 violation of the FCPA, and that Lu and Sophie knew these undisclosed problems also prevented
6 them from providing accurate guidance.

7 374. **Effect on Stock Price:** On 8/3/05, UTSI's stock price declined 7.5% to \$7.90
8 compared to no change in the PPG and the NASDAQ. Analysts attributed the decline to revenues
9 being less than guidance and less than expected revenue guidance for 3Q05.

10 375. **Loss Causation/Date of Loss:** Class members were damaged by the false and
11 misleading statements made on 8/2/05 when the price of the stock declined after some of UTSI's
12 true financial condition was revealed. The stock price declined after (1) UTSI reported on 10/6/05
13 that 3Q05 revenues would be less than guidance, that the Company might need to record a goodwill
14 impairment charge and that the Company had received a formal inquiry from the SEC, (2) UTSI
15 reported on 2/9/06 that it had improperly recognized \$22 million of revenue between 2003 and 2005,
16 (3) UTSI reported on 3/16/06 that there would be a delay in filing the 2005 Form 10-K because the
17 Audit Committee needed more time to investigate revenues that were improperly recorded, (4) the
18 CFRA reported on 9/21/06 that UTSI might have stock option backdating issues, (5) UTSI reported
19 on 11/7/06 that it was investigating stock options, (6) UTSI reported on 1/4/07 that two stock options
20 had been backdated, (7) UTSI reported on 2/1/07 that it would have to restate its financial statements
21 because it failed to account for stock options in accordance with APB 25, and (8) UTSI revealed on
22 7/23/07 and 10/10/07 that 3Q05 results would be restated.

23 376. **Nature of Loss:** Lead Plaintiffs and Class members purchased UTSI stock at
24 artificially inflated prices after 8/2/05 because the market did not know that (1) the significant
25 internal control weaknesses caused UTSI to report false financial results and would cause UTSI to
26 report false results in the future, and (2) revenues, gross margins and EPS would decline
27 significantly because of the reduction in PAS equipment orders, competition in the PAS handset
28 market, the increasing costs of manufacturing the handsets, the partially disclosed problems with the

development of the ASICs and CDMA handsets, and the undisclosed problems with the quality of UTSI's broadband equipment. These conditions would be gradually revealed on the dates listed above.

377. **Date of Statements and Statements:** On 11/3/05, UTSI issued a press release and held a conference call to report the Company's 3Q05 results and give 4Q05 guidance as follows:

Gross Profit Margin: Total Company: 12-15%

378. **Identity of Authors:** The press release was issued on behalf of UTSI and the statement is also attributable to Lu who was quoted in the press release. UTSI's new CFO, Barton, reiterated the guidance during the 11/3/05 conference call in the presence of Lu and Sophie.

379. **True Facts:** UTSI originally reported a gross margin of 12.1% in 4Q05 on 2/9/06 that was restated and reduced to 9.0% on 6/1/06 and restated to 9.2% on 10/10/07:

	<u>2/9/06</u>	<u>6/1/06</u>	<u>10/10/07</u>
Revenue	\$685.5	\$675.6	\$681.1
Cost of sales	<u>\$602.6</u>	<u>\$614.5</u>	<u>\$618.4</u>
Gross Profit	\$82.9	\$61.1	\$62.7
Gross Margin	12.1%	9.0%	9.2%

380. **Scienter and Factual Basis for Scienter:** Lu and Sophie knew there was no reasonable basis for their guidance because they knew (1) UTSI was recognizing revenue without sufficient controls in place to ensure there were not side letters amending or supplementing contract terms that precluded revenue recognition, and (2) UTSI did not have sufficient controls in place to ensure stock compensation expenses were being recorded in accordance with GAAP. Lu and Sophie had been on notice from the Company's auditors since 3/03 that there were significant internal control deficiencies, including the need to "strengthen procedures to ensure side letters and contract amendments are communicated and accounted for in a timely manner," and received additional Management Recommendation letters from PWC in 4/04 (that again noted concerns about the use of side letters that were not forwarded to the finance department) and 2005. The fact that UTSI restated and reduced the 4Q05 gross margin from 12.1% to 9.2%, and that Lu and Sophie knew about the significant internal control deficiencies strengthens the inference they knew there was no reasonable basis for the guidance.

1 381. The significant internal control weaknesses at UTSI, the investigations by the
 2 Company, the SEC and the DOJ into whether the Company obtained sales by bribing foreign
 3 government officials in violation of the FCPA, and the unwinding of the Mongolian joint venture
 4 transaction strongly infer that UTSI did obtain sales by bribing foreign government officials in
 5 violation of the FCPA, and that Lu and Sophie knew these undisclosed problems also prevented
 6 them from providing accurate guidance.

7 382. **Effect on Stock Price:** UTSI's stock price increased from \$5.44 on 11/3/05 to \$6.47
 8 on 11/4/05, a 19.6% increase, as compared to the 0.7% increase in the PPG and a 0.4% increase in
 9 the NASDAQ.

10 383. **Loss Causation/Date of Loss:** Class members were damaged by the false and
 11 misleading statements made on 11/3/05 when the price of the stock declined after some of UTSI's
 12 true financial condition was revealed. The stock price declined after (1) UTSI reported on 2/9/06
 13 that it had improperly recognized \$22 million of revenue between 2003 and 2005, (2) UTSI reported
 14 on 3/16/06 that there would be a delay in filing the 2005 Form 10-K because the Audit Committee
 15 needed more time to investigate revenues that were improperly recorded, and (3) UTSI revealed on
 16 7/23/07 and 10/10/07 that the need to restate revenues improperly recognized in 4Q05 would cause
 17 the 4Q05 gross margin to decline from 12.1% to 9.2%.

18 384. **Nature of Loss:** Class members purchased UTSI stock at artificially inflated prices
 19 after Lu and Sophie gave the 4Q05 guidance because the market still did not know that UTSI was
 20 recognizing revenues without sufficient controls in place to assure they were properly recognized
 21 and that gross margins were accurately reported. If Lu and Sophie had acknowledged that they had
 22 no reasonable basis for giving guidance for gross margins, investors would have known the true
 23 condition of UTSI and lowered their expectations about the Company's current and future prospects
 24 which would have caused the stock price to decline as it did on the dates listed above.

25 4. False and Misleading Statements in 2006

26 385. **Date of Statements and Statements:** On 8/9/06, UTSI issued a press release and
 27 held a conference call to report the Company's 2Q06 results and give 3Q06 guidance as follows:
 28

Gross Profit Margin: Total Company: 16.5-18.5%

* * *

GAAP EPS: Loss of approximately (\$0.23) to (\$0.33)

386. **Identity of Authors:** The press release was issued on behalf of UTSI and the statement is also attributable to Lu, who was quoted in the press release. UTSI's new CFO, Barton, reiterated the guidance during the 11/3/05 conference call in the presence of Lu.

387. **True Facts:** On 10/10/07, UTSI reported gross margins of 12.4% for 3Q06, substantially less than the 16.5%-18.5% guidance, and GAAP EPS of (\$0.36), substantially less than (\$0.23) to (\$0.33).

388. **Scienter and Factual Basis for Scienter:** Lu knew there was no reasonable basis for the guidance because he knew (1) UTSI was recognizing revenue without sufficient controls in place to ensure there were not side letters amending or supplementing contract terms that precluded revenue recognition, and (2) UTSI did not have sufficient controls in place to ensure stock compensation expenses were being recorded in accordance with GAAP. Lu had been on notice from the Company's auditors since 3/03 that there were significant internal control deficiencies, including the need to "strengthen procedures to ensure side letters and contract amendments are communicated and accounted for in a timely manner," and received additional Management Recommendation letters from PWC in 4/04 (that again noted concerns about the use of side letters that were not forwarded to the finance department) and in 2005 and 2006. The fact that UTSI reported 3Q06 gross margins and EPS substantially less than the guidance after the Company restated its financial statements through 2Q06 and that Lu knew about the significant internal control weaknesses strengthens the inference he knew there was no reasonable basis for the guidance.

389. The significant internal control weaknesses at UTSI, the investigations by the Company, the SEC and the DOJ into whether the Company obtained sales by bribing foreign government officials in violation of the FCPA, and the unwinding of the Mongolian joint venture transaction strongly infer that UTSI did obtain sales by bribing foreign government officials in violation of the FCPA, and that Lu knew these undisclosed problems also prevented them from providing accurate guidance.

1 390. **Effect on Stock Price:** UTSI's stock price increased from \$6.61 on 8/9/06 to \$7.47
 2 on 8/10/08, a 13.0% increase compared to a 0.6% decrease in the PPG and a 0.6% increase in the
 3 NASDAQ.

4 391. **Loss Causation/Date of Loss:** Class members were damaged by the false and
 5 misleading statements made on 8/9/06 when the price of the stock declined after some of UTSI's
 6 true financial condition was revealed. The stock price declined after (1) the CFRA reported on
 7 9/21/06 that UTSI might have stock option backdating issues, (2) UTSI reported on 11/7/06 that it
 8 was investigating stock options, (3) UTSI reported on 1/4/07 that two stock options had been
 9 backdated, (4) UTSI reported on 2/1/07 that it would have to restate its financial statements because
 10 it failed to account for stock options in accordance with APB 25, and (5) UTSI revealed on 7/23/07
 11 and 10/10/07 that 3Q06 results were less than the guidance provided on 8/9/06.

12 392. **Nature of Loss:** Class members purchased UTSI stock at artificially inflated prices
 13 after Lu provided the 3Q06 gross margin and EPS guidance on 8/9/06 because the market still did
 14 not know that UTSI was recognizing revenues without sufficient controls in place or what the impact
 15 of the stock compensation expense restatement would be on 3Q06 results. If Lu acknowledged that
 16 he had no reasonable basis for the guidance, investors would have known the true condition of UTSI
 17 and lowered their expectations about the Company's current and future prospects, which would have
 18 caused the stock price to decline as it did on the dates enumerated above.

19 **VI. LOSS CAUSATION/ECONOMIC LOSS**

20 393. During the Class Period, as detailed above, the Individual Defendants engaged in a
 21 fraudulent scheme to deceive the market. The scheme included a course of conduct that artificially
 22 inflated UTSI's stock price and operated as a fraud or deceit on Class Period purchasers of UTSI
 23 securities by misrepresenting the Company's current operations, business success and future
 24 business prospects. Later, however, when the prior misrepresentations and fraudulent conduct could
 25 no longer be explained away as temporary set-backs and *some* of UTSI's true condition began to be
 26 revealed to the market, UTSI's stock price declined and the amount of artificial inflation also began
 27 to come out of the Company's stock price. As a result, Class members who purchased UTSI stock
 28 during the Class Period suffered economic loss, *i.e.*, damages, under the federal securities laws.

1 394. The false and misleading statements and omissions caused and maintained the
2 artificial inflation in UTSI's stock price throughout the Class Period. During the Class Period, UTSI
3 reported materially false and misleading financial results and falsely represented the Company's
4 financial reporting controls were effective when in fact there were numerous material weaknesses in
5 all aspects of the Company's operations, that were causing UTSI to report false and misleading
6 financial results. Lu and Sophie also falsely represented that strength and growth in PAS
7 infrastructure spending in China was leading to strong PAS equipment sales at UTSI when they
8 knew orders had declined, there was excess capacity on existing PAS networks, and the growth rate
9 of PAS subscribers was declining. Lu and Sophie falsely represented UTSI would report improved
10 gross margins on PAS handset sales by selling PAS handsets with lower cost internally developed
11 ASICs and by sales of internally manufactured CDMA handsets when they knew there were
12 undisclosed problems with the development of both that delayed their introduction. Lu and Sophie
13 falsely represented UTSI's sales outside of China would increase the Company's revenues when
14 they knew most of these sales were related party transactions with defendant SOFTBANK and that
15 product quality problems and problems with the Company's supply chain were causing delivery
16 delays and delays in customers accepting and paying for the equipment.

17 395. The false and misleading statements and omissions caused UTSI's stock to trade at
18 artificially inflated prices. From 2/21/03 to 8/21/03, UTSI's stock price increased 150% – compared
19 to a 34% increase in the PPG and a 32% increase in the NASDAQ – and reached a Class Period high
20 of \$45.36. The increases in UTSI's stock price compared to the increases in the PPG and the
21 NASDAQ confirm that the false and misleading statements caused the price increase and negates
22 any inference the price increases were caused by market or industry conditions. The Individual
23 Defendants took advantage of the inflated stock price by selling more than \$40 million of their UTSI
24 stock, and registering and selling 12.1 million additional inflated shares for \$475 million to acquire
25 cellular technologies and the handset division of Audiovox to diversify UTSI's product offerings and
26 reduce dependence on the declining China PAS market.

27 396. Neither Lu, Sophie nor the other Individual Defendants made a complete corrective
28 disclosure confessing they were making false and misleading statements and concealing material

397. The declines in UTSI's stock price following the partial disclosures compared to the changes in the PPG and the NASDAQ negate any inference the losses suffered by Class members were caused by changed market or industry conditions or Company-specific facts unrelated to the fraudulent conduct. The following chart (which is also attached hereto in foldout form) illustrates the changes in UTSI's stock price during the Class Period compared to the PPG and the NASDAQ:

397. The declines in UTSI's stock price following the partial disclosures compared to the changes in the PPG and the NASDAQ negate any inference the losses suffered by Class members were caused by changed market or industry conditions or Company-specific facts unrelated to the fraudulent conduct. The following chart (which is also attached hereto in foldout form) illustrates the changes in UTSI's stock price during the Class Period compared to the PPG and the NASDAQ:



VII. CLASS ACTION ALLEGATIONS AND FRAUD ON THE MARKET PRESUMPTION OF RELIANCE

398. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased UTSI publicly traded securities on the open market during the Class Period, and were damaged thereby (the “Class”). Excluded from the Class are defendants, directors and officers of UTSI and their families and affiliates.

399. The members of the Class are so numerous that joinder of all members is impracticable. During the Class Period, the number of outstanding shares owned by hundreds if not thousands of persons ranged between 102.9 million and 120.8 million. Thus, the disposition of their claims in a class action will provide substantial benefits to the parties and the Court.

400. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class which predominate over questions which may affect individual Class members include:

- (a) Whether the federal securities laws were violated by defendants;
- (b) Whether defendants engaged in a fraudulent scheme and omitted and/or misrepresented material facts;
- (c) Whether defendants’ statements omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;
- (d) Whether defendants knew or deliberately disregarded that their statements were false and misleading;
- (e) Whether the prices of UTSI’s publicly traded securities were artificially inflated;
- (f) Whether defendants’ fraudulent scheme, misrepresentations and omissions caused Class members to suffer economic losses, *i.e.*, damages; and
- (g) The extent of damage sustained by Class members and the appropriate measure of damages.

401. Plaintiffs’ claims are typical of those of the Class because plaintiffs and the Class purchased UTSI securities during the Class Period and sustained damages from defendants’

1 wrongful conduct. Plaintiffs will adequately protect the interests of the Class and have retained
2 counsel who are experienced in class action securities litigation. Plaintiffs have no interests which
3 conflict with those of the Class.

4 402. A class action is superior to other available methods for the fair and efficient
5 adjudication of this controversy. A class action will achieve economies of time, effort and expense
6 and provide uniformity of decision to the similarly situated members of the Class without sacrificing
7 procedural fairness or bringing about other undesirable results. Class members have not indicated an
8 interest in prosecuting separate actions. The number of Class members and the relatively small
9 amounts at stake for individual Class members make separate suits impracticable. No difficulties are
10 likely to be encountered in the management of this action as a class action.

11 403. In addition, a class action is superior to other methods of fairly and efficiently
12 adjudicating this controversy because the questions of law and fact common to the Class
13 predominate over any questions affecting only individual Class members. Although individual Class
14 members have suffered disparate damages, the fraudulent misrepresentations and omissions causing
15 damages are common to all Class members. Further, there are no individual issues of reliance that
16 could make this action unsuited for treatment as a class action because all Class members relied on
17 the integrity of the market and are entitled to the fraud-on-the-market presumption of reliance.

18 404. The market for UTSI's common stock was open, well-developed and efficient at all
19 relevant times. UTSI's stock met the requirements for listing, and was listed and actively traded on
20 the NASDAQ, a highly efficient and automated market. UTSI filed periodic public reports with the
21 SEC and the NASDAQ. UTSI regularly communicated with public investors via established market
22 communication mechanisms, including through regular disseminations of press releases on the
23 national circuits of major newswire services and through other wide-ranging public disclosures, such
24 as communications with the financial press and other similar reporting services.

25 405. As alleged above, the change in the price of UTSI's stock – compared to the changes
26 in the PPG and the NASDAQ – in response to the release of unexpected material positive and
27 negative information about the Company, shows there was a cause and effect relationship between
28 the public release of the unexpected information about UTSI and the price movement in the

1 Company's stock. The average weekly trading volume of UTSI's stock during the Class Period was
2 approximately 15.2 million shares or 12.9% of total outstanding shares. Numerous analysts
3 followed UTSI, attended the Company's conference calls and issued reports throughout the Class
4 Period. The Company was eligible to – and did – register securities on Form S-3 during the Class
5 Period. There were numerous market makers for UTSI's stock. Hundreds of institutions owned
6 between 53% and 75% of UTSI's outstanding shares during the Class Period and an even higher
7 percentage of the public float which was approximately 10-20 million shares lower than total
8 outstanding shares.

9 406. As a result of the foregoing, the market for UTSI's common stock promptly digested
10 current information regarding UTSI from all publicly available sources and reflected such
11 information in UTSI's stock price. Under these circumstances, all purchasers of UTSI's securities
12 during the Class Period suffered similar injury through their purchase of UTSI's securities at
13 artificially inflated prices and the subsequent revelations concerning declines in price, and a
14 presumption of reliance applies.

15 **VIII. GROUP PLEADING AND CONTROL**

16 407. Because of their senior executive and managerial positions with UTSI and UTSI's
17 Board and the numerous related party transactions between UTSI and SOFTBANK, the Individual
18 Defendants (as detailed in ¶¶30-33) and SOFTBANK (through Son) had access to the adverse
19 undisclosed information described herein. The Individual Defendants and SOFTBANK obtained
20 such information through internal corporate documents, conversations and connections with other
21 corporate officers and employees, attendance at management and/or board of directors meetings and
22 committees thereof and through reports and other information provided to them in connection
23 therewith. The Individual Defendants and SOFTBANK knew and with deliberate disregard ignored
24 the adverse information had not been disclosed to, and was being concealed from, the investing
25 public.

26 408. It is appropriate to treat the Individual Defendants as a group for pleading purposes
27 and to presume that the false, misleading and incomplete information contained in the Company's
28 public filings, releases and other publications as alleged herein were the collective actions of the

1 narrowly defined group of Individual Defendants identified above. The Individual Defendants were
2 the most senior executives of UTSI, managed the day-to-day operations and had access to
3 confidential, proprietary information concerning the Company and its business, operations, products,
4 growth, financial statements, and financial condition, as alleged herein. The Individual Defendants
5 were involved in drafting, producing, reviewing and/or disseminating the false and misleading
6 statements and information alleged herein, were aware of or deliberately disregarded that the false
7 and misleading statements were being issued regarding the Company, and approved or ratified these
8 statements, in violation of the federal securities laws.

9 409. As officers and/or directors and controlling persons of a publicly held company
10 whose common stock was, and is, registered with the SEC pursuant to the Securities Act of 1933
11 (“1933 Act”), traded on NASDAQ, and governed by the provisions of the federal securities laws, the
12 Individual Defendants and SOFTBANK each had a duty to disseminate promptly accurate and
13 truthful information with respect to the Company’s financial condition and performance, growth,
14 operations, financial statements, business, products, markets, management, earnings and present and
15 future business prospects, and to correct any previously issued statements that had become
16 materially misleading or untrue, so that the market price of the Company’s common stock would be
17 based upon truthful information. The Individual Defendants’ misrepresentations and omissions
18 during the Class Period violated these specific requirements and obligations.

19 410. Each of the Individual Defendants is liable as a direct participant with respect to the
20 wrongs complained of herein. In addition, the Individual Defendants and SOFTBANK, by reason of
21 their status as senior officers and/or directors (including SOFTBANK through Son and his
22 ownership in and business ties to UTSI), were “controlling persons” within the meaning of §20 of
23 the 1934 Act and §15 of the 1933 Act, and had the power and influence to cause the Company to
24 engage in the unlawful conduct complained of herein. Because of their positions of control, the
25 Individual Defendants and SOFTBANK were able to and did, directly or indirectly, control the
26 conduct of UTSI’s business.

FIRST CLAIM FOR RELIEF

**For Violation of Section 10(b) of the 1934 Act and Rule 10b-5
Against UTSI and the Individual Defendants**

411. Plaintiffs incorporate all paragraphs as if set forth herein.

412. During the Class Period, defendants disseminated or approved the false statements specified above, which they knew or recklessly disregarded were materially false and misleading in that they contained material misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

413. Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that they:

(a) Employed devices, schemes, and artifices to defraud;

(b) Made untrue statements of material facts or omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading; or

(c) Engaged in acts, practices, and a course of business that operated as a fraud or deceit upon plaintiffs and others similarly situated in connection with their purchases of UTSI publicly traded securities during the Class Period.

414. Plaintiffs and the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices for UTSI publicly traded securities. Plaintiffs and the Class would not have purchased UTSI publicly traded securities at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by defendants' false and misleading statements.

415. As a direct and proximate result of these defendants' wrongful conduct, plaintiffs and the other members of the Class suffered damages in connection with their purchases of UTSI publicly traded securities during the Class Period.

SECOND CLAIM FOR RELIEF

**For Violation of Section 14(a) of the 1934 Act and
Rule 14a-9 Against UTSI and the Individual Defendants**

416. Plaintiffs incorporate all paragraphs as if set forth herein.

1 417. Rule 14a-9, promulgated pursuant to §14(a) of the 1934 Act, provides that no proxy
2 statement shall contain “any statement which, at the time and in the light of the circumstances under
3 which it is made, is false or misleading with respect to any material fact, or which omits to state any
4 material fact necessary in order to make the statements therein not false or misleading.” 17 C.F.R.
5 §240.14a-9(a).

6 418. UTSI’s 4/2/03, 4/7/04, 4/18/05, 6/16/06 and 6/21/06 Proxy Statements were required
7 to disclose the direct and indirect compensation of the Company’s executive officers and directors,
8 including a description of stock options granted to these individuals by the Company.

9 419. The Proxy Statements filed with the SEC during the Class Period falsely represented
10 that the exercise prices of the stock options were the market price of UTSI’s stock on the date of the
11 option grant, when in fact the options were backdated to dates such that the exercise prices were less
12 than the market price of the stock on the misrepresented date of the grant. The Proxy Statements
13 also set forth the options granted each year to directors and executives, including the Individual
14 Defendants, the purported option grant dates and the purported exercise prices of such options. The
15 Company has admitted that those representations were false, and that the options were actually
16 granted on different dates when the price of the Company’s stock was less than the price of the
17 Company’s stock on the misrepresented grant date.

18 420. The Proxy Statements violated §14(a) of the 1934 Act and Rule 14a-9 because they
19 omitted material facts, including the fact that defendants were causing UTSI to engage in an option
20 backdating scheme, a fact which defendants were aware of and participated in from even before the
21 Class Period through 2Q06, resulting in the Company understating stock compensation expenses by
22 \$27.2 million.

23 421. In the exercise of reasonable care, defendants should have known that the Proxy
24 Statements were materially false and misleading.

25 422. The misrepresentations and omissions in the Proxy Statements were material to
26 plaintiffs in voting on each Proxy Statement. The Proxy Statements were an essential link in the
27 accomplishment of the continuation of defendants’ unlawful stock option backdating scheme, as
28 revelations of the truth would have immediately thwarted a continuation of shareholders’

1 endorsement of the directors' positions, the executive officers' compensation and the Company's
2 compensation policies.

3 423. Plaintiffs were damaged as a result of the material misrepresentations and omissions
4 in the Proxy Statements because, among other things, the Company awarded millions of stock
5 options pursuant to plans that were invalidly approved by shareholders.

6 **THIRD CLAIM FOR RELIEF**

7 **For Violation of Section 20(a) of the 1934 Act** 8 **Against the Individual Defendants and SOFTBANK**

9 424. Plaintiffs incorporate all paragraphs as if set forth herein.

10 425. The Individual Defendants and SOFTBANK acted as controlling persons of UTSI
11 within the meaning of §20(a) of the 1934 Act. They prepared, or were responsible for preparing, the
12 Company's press releases and SEC filings. By reason of their positions as officers and/or directors
13 of UTSI, and their ownership of UTSI stock, the Individual Defendants and SOFTBANK had the
14 power and authority to cause UTSI to engage in the wrongful conduct complained of herein. UTSI
15 controlled each of the Individual Defendants and all of its employees. By reason of such conduct,
16 defendants are liable pursuant to §20(a) of the 1934 Act.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, plaintiffs pray for relief and judgment, including preliminary and permanent
19 injunctive relief, as follows:

20 A. Determining that this action is a proper class action, and certifying plaintiffs as Class
21 representatives under Rule 23 of the Federal Rules of Civil Procedure;

22 B. Awarding preliminary and permanent injunctive relief in favor of plaintiffs and the
23 Class against defendants and their counsel, agents and all persons acting under, in concert with, or
24 for them, including an accounting of and the imposition of a constructive trust and/or an asset freeze
25 on defendants' insider trading proceeds;

26 C. Ordering an accounting of defendants' insider-trading proceeds;

27 D. Disgorgement of defendants' insider-trading proceeds;

28 E. Restitution of investors' monies of which they were defrauded;

1 F. Awarding compensatory damages in favor of plaintiffs and the other Class members
2 against all defendants, jointly and severally, for all damages sustained as a result of defendants'
3 wrongdoing, in an amount to be proven at trial, including interest thereon;

4 G. Awarding plaintiffs and the Class their reasonable costs and expenses incurred in this
5 action, including counsel fees and expert fees; and

6 H. Such other and further relief as the Court may deem just and proper.

7 **JURY DEMAND**

8 Plaintiffs demand a trial by jury.

9 DATED: May 14, 2008

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CERTIFICATE OF SERVICE

I hereby certify that on May 14, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I further certify that I caused this document to be forwarded to the following designated Internet site at: <http://securities.csgrr.com/>.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 14, 2008.

/s/ Christopher P. Seefer

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